SUPREME COURT OF THE UNITED STATES.

No. 662.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, APPELLANT,

vs.

ANNA C. CUSHMAN, THE SOUTH SIDE HOMESTEAD ASSOCIATION OF THE CITY OF CHICAGO, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the Circuit Court of the United States for the Northern District of Illinois, held at the United States Court rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, United States District Judge for the said district, on Monday, the fourteenth day of July, eighteen hundred and seventy-nine, and of our Independence the one hundred and fourth year.

WM. H. BRADLEY, *Clerk.*

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,

vs.

ANNA C. CUSHMAN, The South-Side Homestead Association of the city of Chicago, a corporation, etc., James Murphy, Catharine Murphy, his wife, William D. Kerfoot, William A. Merigold, Jacob Loewe, Mary Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter H. Hoeuk, Mary Hoeuk, his wife, Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann, Fredericka Wieckmann, his wife, Henry W. Kuhlman, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, Illinois Starch Company, a corporation, etc., John R. Adams, Levi Rosenfield, Jacob Rosenberg, The Newark Savings Institution of Newark, New Jersey, a corporation, etc., Salome Hatheway, Elvathan P. Hatheway,
2 Edgar Loomis, Martin P. Follett, The National Bank of Illinois, a corporation, etc., William M. Derby, John E. Owsley, Jesse Spalding, receiver, The Commercial National Bank of Chicago, a corporation, etc., The National City Bank of Ottawa, Illinois, a corporation, etc., Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Denland, John Terwilliger, John A. Waterman, Henry E. Mallory, Hubert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, John W. Waug- } In Chancery.

hop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham, Ferdinand Wengi, Henry Cregan, Caroline F. Wilson, Executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Nathan H. Walworth, Receiver of the City National Bank of Chicago, Lewis C. Ellsworth, Receiver, Sherman Leland, Administrator of the Estate of William H. W. Cushman, deceased.

Be it remembered, that on the twelfth day of December, eighteen hundred and seventy-seven, came the Connecticut Mutual Life Insurance Company, complainant in the above entitled cause, by Isham & Lincoln, its solicitors, and filed in the office of the clerk of the circuit court of the United States of America, for the northern district of Illinois, at Chicago, in said
3 district, its bond for costs and bill of complaint in said entitled cause, which said bond for costs and bill of complaint are in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

Circuit Court; Term A. D. 187 .

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
WILLIAM H. W. CUSHMAN *et al.* } In Chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the complainant of any costs ordered or adjudged to be paid by it, hereby agree and stipulate that execution may issue against my property for any costs taxed against it.

Dated this 12th day of December, A. D. 1877.

ROBERT F. LINCOLN.

Endorsed: Filed Dec. 12, A. D. 1877. W. H. Bradley, clerk.

4 *Bill of Complaint.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

To the judges of the circuit court of the United States for the northern district of Illinois:

The Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, and which is a citizen of the State of Connecticut, and at the time of the contract hereinafter set forth, and thence hitherto doing business in the State of Illinois, in conformity to the laws thereof, brings this its bill of complaint against William H. W. Cushman, Anna C. Cushman, his wife, the South Side Homestead Association of the City of Chicago, a corporation created by and existing under the laws of the State of Illinois, James Murphy, Catherine Murphy, his wife, William D. Kerfoot, William A. Merigold, Jacob Loewe, Mary Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter H. Hoeuk, Mary Hoeuk, his wife, Illinois Starch Company, a corporation created by and existing under the laws of the State of Illinois, Aaron Gibbs, Louis D. Hoard, Hermann Weickmann, Fredericka Weickmann, Henry W. Kuhlmann, Charles L. Wilson, Caroline F. Wilson, his wife, Isaac N. Hardin, Gertrude H. Hardin, his wife, John R. Adams, Levi Rosenfeld, Jacob Rosenberg, Edgar Loomis, Martin P. Follett, William M. Derby, John E. Owsley, Jesse Spalding, receiver, Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John W. Waughop, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernhard Nold, the National Bank of Illinois, a corporation created by and existing under the laws of the United States; the Commercial National Bank of Chicago, a corporation created by and existing under the laws of the United States; the National City Bank of Ottawa, Illinois, a corporation created by and existing under the laws of the United States, who are each and all citizens of the State of Illinois, and residents of said State; and also against Salome Hatheway and Elnathan P. Hatheway and George Forbes, who are citizens of the State of Massachusetts, and are residents of said State; and also against the Newark Savings Institution of Newark, New Jersey, a corporation created by and existing under the laws of the State of New Jersey, which is a citizen of said State of New Jersey and a resident of said State; and also against S. H. Melvin and Henry Root, who are citizens of the State of Illinois, and are residents of the southern district thereof; and against William H. Cushman and Adeline D. Cushman, his wife, who are citizens of the State of Colorado, and are residents of said State.

And thereupon your orator complains and says that the said

William H. W. Cushman, one of the defendants hereinbefore named, on or about the 29th day of January, in the year of our Lord one thousand eight hundred and seventy, applied to and requested your orator to lend him the sum of seventy-five thousand ($75,000) dollars, on the security hereinafter named, and that your orator complied with such request, and did accordingly, at Chicago aforesaid, lend and advance the said
5 sum of seventy-five thousand ($75,000) dollars to the said William H. W. Cushman, upon the bond hereinafter set forth, which was expressly declared to be made under and in all respects to be construed by the laws of the State of Illinois.

And that thereupon, and in order to secure the repayment thereof to your orator, with interest thereon at the rate of nine per centum per annum, payable half yearly, the said William H. W. Cushman duly executed and delivered to your orator his certain bond or obligation in writing, sealed with his seal, and bearing date at Chicago, the said twenty-ninth day of January, in the year of our Lord one thousand eight hundred and seventy, in the penal sum of one hundred and fifty thousand ($150,000) dollars, conditioned in effect for the payment unto your orator, its successors or assigns, of the principal sum of seventy-five thousand ($75,000) dollars, on the 29th day of January, in the year of our Lord one thousand eight hundred and seventy-five, with interest for the same, to be computed from the day of the date thereof, at and after the rate of nine per centum per annum, which said interest should be paid half-yearly, to wit, on the twenty-ninth day of each of the months of July and January, which would be in each and every year until said principal sum should be fully paid, which said interest payments, until the said principal sum should become due, were specified in and further secured by ten coupons given therewith.

And to which said bond there was a proviso added whereby, in effect, it was expressly agreed and fully understood that if default should be made in the payment of any of the interest on the principal sum above mentioned, payable half-yearly as aforesaid, and any portion thereof should remain due and unpaid for the space of thirty days after the same should become due and payable, according to the above condition, then and in that case the principal sum above mentioned, together with all arrearages of interest thereon, should, at the option of your orator, its successors or assigns, thereupon become due and payable, and should become collectible, without notice, immediately, or at any time after any such default, anything thereinbefore contained to the contrary notwithstanding, as by the said bond now in possession of your orator, and ready to be produced and proved as your honors shall direct, reference being thereto had may more fully and at large appear.

And your orator further shows unto your honors, that for the purpose of further securing the repayment to your orator of said sum of money so loaned as aforesaid, with the interest thereon as aforesaid, the said William H. W. Cushman and Anna C. Cushman, also at the same time, executed and delivered unto your orator their certain indenture of mortgage, under their hands and seals, bearing the date the said 29th day of January, in the year of our Lord one thousand eight hundred and seventy, and made or expressed to be made between the said William H. W. Cushman and Anna C. Cushman,
6 as parties of the first part, and your orator as party of the second part, and that thereby, after reciting as therein mentioned, it was witnessed that, for the better securing the payment of the said sum of money mentioned in the condition of said bond, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by your orator, the receipt whereof was thereby acknowledged, they, the said William H. W. Cushman and Anna C. Cushman, did grant, bargain, sell, alien, release, convey and confirm unto your orator, its successors and assigns, all that certain lot, piece or parcel of land situate, lying and being in the County of Cook, and State of Illinois, known and described as being the north half of the northwest quarter of section nine, (9,) in township thirty-eight, (38,) north of range fourteen, (14,) east of the third principal meridian, containing eighty acres, more or less, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in and to the same, and every part and parcel thereof, with the appurtenances: to have and to hold the said granted, bargained and described premises, with the appurtenances, unto your orator, its successors and assigns forever; but subject to the proviso therein contained, and said indenture of mortgage was upon the express condition nevertheless, that if the said William H. W. Cushman and Anna C. Cushman, their heirs, executors, administrators and assigns, should and did well and truly pay, or cause to be paid unto your orator, its successors or assigns, the said principal sum of money mentioned in the condition of said bond, and the interest thereon at the time and times respectively, and in the manner mentioned in the condition of said bond, according to the true intent and meaning thereof, and should and did promptly and faithfully fulfill and perform all the covenants and agreements thereinafter mentioned, that then and from thence-

until the said principal sum and the interest thereon should be fully paid, suffer said premises or any part thereof to be sold for any tax or assessment whatsoever, nor do or permit to be done anything should tend to impair the value thereof or to weaken, diminish or impair the security intended to be effected under and by virtue of said mortgage, and it was further provided that in the event that your orator, its successors or assigns, should expend any money, either to save said premises or any part thereof from any sale for taxes or assessments, or to redeem the same from any such sale, or to protect the title or possession thereof, then all such money so expended should be and become a new and additional principal sum of money secured by said mortgage, and should be due and payable, and might be collected immediately or at any time thereafter with interest thereon at the rate of ten per centum from the time of so paying the same.

And your orator further shows unto your honors that after the making of the said mortgage and the covenants aforesaid by the said William H. W. Cushman and Anna C. Cushman, large sums of money became due and payable for taxes and assessments which had been levied and assessed upon said premises according to the law and for the payment of which, upon default made by said William H. W. Cushman and those claiming title under him. A large part of said mortgaged premises were sold for the non-payment of divers special assessments and became and were liable to be sold for the non-payment of divers other special assessments, and your orator shows that such default was made in the payment of said special assessments, and that on account of such default it became necessary that your orator (or some one on its behalf) should, and your orator, therefore, did necessarily, pay, lay out, and expend, to protect part of said lands from sale, and to redeem part of said lands from sales already made as aforesaid, for and on account of such special assessments, the following sums of money at the dates, as follows: 1877, December 10th, amount so paid, $2,876.65; 1877, December 11th, amount so paid, $7,920.91. And your orator shows that the repayment to it of the several amounts so paid by it, together with interest at the rate of ten per centum per annum, is secured by the provisions of said mortgage, and that it is entitled to recover the same as a part of the indebtedness due under said mortgage.

Your orator further shows that of the defendants hereinbefore named, the following named, John R. Adams, Levi Rosenfeld, Jacob Rosenberg, Edgar Loomis, Martin P. Follett, William M. Derby, John E. Owsley, Washington Libby, the National Bank of Illinois, the Commercial National Bank of Chicago, the National City Bank of Ottawa, Illinois; Salome Hatheway,

Elnathan P. Hatheway, S. H. Melvin, and the Illinois
11 Starch Company, have respectively, at various times since the making and recording of your orator's said mortgage, recovered judgments against the said William H. W. Cushman, which are claimed to be liens upon the equity of redemption in said mortgaged land; and your orator shows that it is informed and believes, and so states the fact to be, that all of said last named defendants have sold and assigned their said respective judgments, and all their right, title and interest in the same to said defendant, William H. Cushman, and that he is now the holder and owner of said judgments, and each of them, except as to the judgment recovered by said the Illinois Starch Company, and that said last mentioned judgment is held by said defendant John W. Waughop by assignment from said William H. Cushman.

12 And your orator further shows that no proceedings at law have been had or taken to recover the debt secured by said bond and mortgage, or of any part thereof, or of any of the interest due on the same.

And your orator further shows unto your Honors that it has caused application frequently and in a friendly manner to be made to the said William H. W. Cushman and Anna C. Cushman, and has requested them to pay the said principal sum of money and interest, and the amount of taxes and assessments, so paid as aforesaid, to your orator, or else to release their equity of redemption in and to the said mortgaged premises; and your orator well hoped that such its reasonable request would have been complied with, as in justice it ought to have been; but now, so it is, the said defendants refuse so to do; and the other of the defendants hereinbefore named, have or claim to have some interest in the said mortgaged premises, or some part thereof, either as subsequent purchasers, incumbrancers, judgment creditors or otherwise, and to be entitled to redeem the same, but they, and also the said William W. H. Cushman and Anna C. Cushman refuse so to do.

And your orator charges that the interest in the said mortgaged premises which the said defendants (other than the said William H. W. Cushman and Anna C. Cushman) have, if any they or either of them have in said premises, or any part thereof, has accrued subsequent to the lien of the said mortgage to your orator, and is subordinate thereto, and that the said defendants ought either to pay what is due to your orator as aforesaid, under the several covenants of the said bond and the said mortgage, or to release their equity of redemption in said mortgaged premises, but they refuse so to do.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby

prayed, and may full, true and perfect answers make (not under oath, answers under oath being hereby waived, according to the statute in such case made and provided,) to all and singular the premises as fully and particularly as if the same were hereinafter repeated;

Your orator prays that an account may be taken under the direction of this court, of what is due and owing to your orator for principal money and interest on its said bond and mortgage, and of all moneys due your orator under any of the covenants therein contained, and that said defendants may be decreed to pay to your orator what may be found due to it on taking such account as aforesaid, together with the costs of this suit, by a short day to be appointed by this honorable court for that purpurpose, or in default thereof that said premises may be sold by and under the direction of this court, according to the rules and practice of this court; and the proceeds of such sale may be applied to the payment of the amount due your orator as aforesaid, together with all costs and expenses; and that the said William H. W. Cushman and Anna C. Cushman, and the other defendants, and all persons claiming under them, subsequent to the commencement of this suit may be foreclosed, and barred from all equity of redemption or claim of, in and to the said mortgaged premises, and every part thereof.

13 And that your orator may have such further and other relief in the premises as to your Honors shall seem meet and the nature of this case may require.

May it please your Honors to grant unto your orator the most gracious writ of supœna of the United States of America, to be direeted to the said William H. W. Cushman, Anna C. Cushman, his wife, The Southside Homestead Association of the city of Chicago, a corporation created by and existing under the laws of the State of Illinois, James Murphy, Catharine Murphy, his wife, William D. Kerfoot, William A. Merigold, Jacob Loewe, Mary Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter H. Hoeuk, Mary Hoeuk, his wife, Illinois Starch Company, a corporation created by and existing under the laws of the State of Illinois, Aaron Gibbs, Louis D. Hoard, Hermann Weickmann, Fredericka Weickmann, Henry W. Kuhlmann, Charles L. Wilson, Caroline F. Wilson, his wife, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, John R. Adams, Levi Rosenfield, Jacob Rosenberg, Edgar Loomis, Martin P. Follett, William M. Derby, John E. Owsley, Jesse Spalding, receiver, Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Micheal Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George

E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove,
14 W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernhard Nold, The National Bank of Illinois, a corporation created by and existing under the laws of the United States, The Commercial National Bank of Chicago, a corporation created by and existing under the laws of the United States, The National City Bank of Ottowa, Illinois, a corporation created by and existing under the laws of the United States, Salome Hatheway, Elnathan P. Hatheway, George Forbes, The Newark Savings Institution of Newark, New Jersey, a corporation created by and existing under the laws of the State of New Jersey, and S. H. Melvin and John W. Waughop, and Henry Root, thereby commanding them and every of them at a certain day and under a certain pain therein to be specified, personally to be and appear before your Honors in this Honorable Court, and then and there to answer all and singular the premises, and to stand to, perform and abide such order and decree therein as to your Honors shall seem meet. And your orator will ever pray, &c.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By ISHAM & LINCOLN, *its Solicitors.*

EDWARD S. ISHAM, *of Counsel.*

Endorsed: Filed Dec. 12, 1877. W. H. Bradley, clerk.

15 On the same day, to wit, the twelfth day of December, A. D. 1877, a writ of subpœna in chancery, issued out of said clerk's office against said defendants in said entitled cause, which said writ, together with the returns of the marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois. }

The United States of America to William H. W. Cushman, Anna C. Cushman, his wife; the Southside Homestead Association, of the city of Chicago, a corporation, etc.; James Murphy, Mary Murphy, his wife; William D. Kerfoot, William A. Merigold, Jacob Loewe, Mary Loewe, his wife; John Schieberl, Helena Schieberl, his wife; Peter Hoeuk, Mary Hoeuk, his wife; Illinois Starch Company, a corporation, &c.; Aaron Gibbs, Louis D. Hoard, Hermann Weickmann, Fredericka Weickmann, Henry W. Kuhlmann, Charles L. Wilson, Mary Wilson, his wife; Isaac N. Hardin, Gertrude H. Hardin, his wife; William H.

Cushman, Adeline D. Cushman, his wife; John R. Adams, Levi Rosenfeld, Jacob Rosenberg, Edgar Loomis, Martin P. Follett, William M. Derby, John E. Owsley, Jesse W. Spalding, receiver; Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Water-
16 man, Henry E. Mallory, Henry C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernhard Nold, the National Bank of Illinois, a corporation, etc; the Commercial National Bank of Chicago, a corporation, etc.; the National City Bank of Ottawa, Illinois, a corporation, etc,; Salome Hatheway, Elnathan P. Hatheway, George Forbes, the Newark Savings Institution, of Newark, New Jersey, a corporation, etc.; and S. H. Melvin and John W. Waughop, and Henry Root, Greeting:

We command you, and every one of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of February next, to answer the bill of complaint of the Connecticut Mutual Life Insurance Company, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment or decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the 102d.

[SEAL.] WM. H. BRADLEY, *Clerk.*

17 *Memorandum.*

The above-named defendants are notified that, unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as aforesaid, and a decree entered accordingly. WM. H. BRADLEY, *Clerk.*

Marshal's Returns.

I have served the within [—] my district in the following manner, to wit:

Upon William H. Cushman, therein named, on the 12th day of December, A. D. 1877; also upon Anna C. Cushman, therein named, on the 4th day of January, A. D. 1878; also upon the Illinois Starch Company, therein named, on the 4th day of January, A. D. 1878, by delivering a true copy thereof to Andrew Lynch, secretary of said company, not being able to find the president in my district. Upon the National City Bank of Ottawa, therein named, by delivering a true copy thereof to the president of said bank on the 4th day of January, 1878.

JESSE S. HILDRUP,
U. S. Marshal.
By L. O. GILMAN, *Deputy.*

I have served the within writ within my district upon the persons named therein by personally delivering a true copy of the said writ to the South Side Homestead Association of the
18 . city of Chicago, by delivering a true copy to Isaac N. Hardin, treasurer of said association, not being able to find the president of said association, on the 18th day of January, A. D. 1878. To William D. Kerfoot, William A. Merigold, on the 14 day of January, A. D. 1878. To Mary Loewe, Helena Schieberl, on the 15 day of January, A. D. 1878. To Isaac N Hardin on the 18 day of January, A. D. 1878. To John R Adams on the 22 day of January, A. D. 1878. To Edgar Loomis on the 2 day of January, A. D. 1878. To Martin P. Follett on on the 31 day of December, A. D. 1877. To John E. Owsley on the 16 day of January, A. D. 1878. To Jesse Spalding, receiver, on the 18 day of January, A. D. 1878. To Joshua Knickerbocker on the 15 day of January, A. D. 1878. To Jacob Gross on the 1 day of February, A. D. 1878. To Ezra T. Durland, John A. Waterman, Henry E. Mallory, on the 2 day of January, A. D. 1878. To Herbert C. Mallory (sued as Henry C. Mallory) on the 2 day of January, A. D. 1878. To George E. Bensley, John B. Bensley, on the 14 day of January, A. D. 1878. To Frederick Bauman, Edward Bauman, on the 1 day of February, A. D. 1878. To Bernard Nold on the 2 day of February, A. D. 1878. To John W. Waughop on the 8 day of January, A. D. 1878. To the Commercial National Bank of Chicago by delivering a copy to H. F. Eames, president of said bank, on the 31 day of December, 1877. To the National Bank of Illinois by delivering a copy to George Schneider, president of said bank, on the 31 day of December, A. D. 1877. To John W. Burdsall (sued as John M. Burdsall) on the 2 day of February, A. D. 1878.

I also served the same upon the following-named defendants, not having been able to find them to serve personally, by
19 leaving a true copy for each of them at their usual place

of abode, with an adult person, and a member of their respective families, to wit:

Upon William H. W. Cushman on the 31 day of December, A. D. 1877, with A. L. Chamberlain. Upon James Murphy, Catherine Murphy (sued as Mary Murphy) with Ann Keirn on the 2 day of Feb., A. D. 1878. Upon Jacob Loewe with Mary Loewe on the 15 day of Jan., A. D. 1878. Upon John Schieberl with Helena Schieberl, January 15th day, A. D. 1878. Upon Aaron Gibbs with F. C. Gibbs on the 24 day of January, A. D. 1878. Upon Charles L. Wilson and Mary Wilson with A. Hanley on the 24 day of January, A. D. 1878. Upon Levi Rosenfeld with Mrs. Stettauer on 8 day of January, A. D. 1878. Upon Jacob Rosenberg with Rosa Rosenberg on the 8 day of Jan'y, A. D. 1878. Upon William M. Derby with H. Mahoney on the 8 day of Jan., A. D. 1878. Upon Washington Libby with Charles Hilton on the 14 day of January, A. D. 1878. Upon David C. Wagner (sued as Daniel Wagner) with Ellen Nodine on the 2 day of February, A. D. 1878. Upon J. S. Wallace with Mrs. Ross on the 8 day of January, A. D. 1878.

I did not serve the other defendants, being unable to find them within my district.

J. S. HILDRUP,
U. S. Marshal.
By J. STILLWELL, *Deputy.*

Special Deputy's Return.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

20 Know all men by these presents, that I have appointed and by these presents do appoint E. L. Waterman my true and lawful deputy, to execute the annexed writ, The Connecticut Mutual Life Ins. Co. *vs.* William H. W. Cushman et al., and to make return of the execution thereof according to law.

JESSE S. HILDRUP, [SEAL.]
United States Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit: by delivering a true and correct copy thereof to Gertrude H. Hardin, therein named, on the 2d day of February, A. D. 1878.

JESSE S. HILDRUP,
United States Marshal.
By E. L. WATERMAN,
Special Deputy.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

E. L. Waterman being duly sworn, deposes and says that he

served the annexed writ, as stated in the foregoing return, and that the expense returned by nim, in addition to the fees, was actually incurred, and that the same is according to law.

E. L. WATERMAN.

Subscribed and sworn to before me this 5th day of February, A. D. 1878.

[SEAL.] JAMES H. PADDOCK, *Notary Public.*

Endorsed: Filed Feb. 11th, A. D. 1878. W. H. Bradley, clerk.

21 And afterwards, to wit, on the twenty-first day of December, A. D. 1877, in the December term of said court, in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN *et al.* } In Chancery.

On motion of complainant's solicitors it is ordered by the court that the bill herein be dismissed as to the defendant H. Melvin, and on like motion leave is given complainant to make John J. Mitchell, D. W. Graham, Ferdinand Wengi, and Henry Cregan additional defendants herein.

And afterwards, to wit, on the second day of January, A. D. 1878, came Anna C. Cushman, one of the defendants herein, by her solicitor, and filed in said clerk's office her answer to the bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

CONNECTICUT MUTUAL LIFE INSURANCE CO. *vs.* WILLIAM H. W. CUSHMAN, ANNA C. CUSHMAN *et al.*

22 The separate answer of Anna C. Cushman to the bill of complaint filed in the above-entitled cause. This respondent, saving and reserving unto herself all advantages of exception to the many errors and insufficiencies of said bill, for answer thereto or so much thereof as she is advised is necessary or material for her to answer unto, says that she admits that she is the wife of defendant William H. W. Cushman, and that said Cushman was the owner of the real estate in said bill described, and she denies that she ever executed the mortgage in said bill specified, and which is sought to be foreclosed in said suit, nor

has she ever in any manner relinquished her right of dower in the lands and tenements in said mortgage described; as to all other matters in said bill stated she has no means of knowledge, and cannot answer whether the same are truly stated in said bill or not, and she leaves the said complainant to prove the same as it may be advised; and having fully answered she prays to be hence dismissed with her reasonable costs.

J. O. GLOVER,
Solicitor for Anna C. Cushman.

Endorsed: Filed Jan'y 2, 1878. W. H. Bradley, clerk.

23 And afterwards, to wit, on the twenty-fourth day of January, A. D. 1878, came the complainant herein, by its solicitors, and filed in said clerk's office its replication to the answer of Anna C. Cushman, which said replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

In the Circuit Court of the United States for the Northern District of Illinois.

In Chancery, Gen. No. 15249. Term No. 1202

The replication of the Connecticut Mutual Life Insurance Company, complainant, to the separate answer of Anna C. Cushman.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication, thereunto saith, that it does and will aver, maintain and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be
24 replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays, as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainant.

Endorsed: Filed this 24th day of January, 1878, W. H. Bradley, clerk.

Afterwards, to wit, on the fifth day of March, A. D. 1878, came

John W. Waughop, one of the defendants herein, and filed in said clerk's office his answer to the bill of complaint in said entitled cause, which said answer is the words and figures following, to wit:

Answer of John W. Waughop.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

Circuit Court of the United States, February Term, A. D. 1878.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
WILLIAM H. W. CUSHMAN, ANNA C. CUSHMAN, his wife, THE SOUTH SIDE HOMESTEAD ASSOCIATION OF THE CITY OF
25 CHICAGO, &c., JAMES MURPHY, *et al.*
} Bill to Foreclose.

The separate answer of John W. Waughop, one of the defendants.

This defendant, saving and reserving to himself all manner of benefit of advantage, &c., for answer to the said bill of complaint, says that as to the said several allegations of the said bill of complaint as to the execution of one or more mortgages on the said premises, he has no information, except as he has derived the same from reading the said bill, and does not admit or deny the same, but requires proof; but then he, this defendant, states and shows to this court that on the seventh day of January, 1874, the Illinois Starch Company, a corporation organized and existing under and by authority of the laws of the State of Illinois, recovered a judgment against the said defendants, William H. W. Cushman and Isaac N. Hardin, for the sum of two thousand and fifty-three dollars and twenty-one cents ($2,053.21) and costs of court, and on that day, to wit, on the seventh day of January, A. D. 1874, became a lien on the real estate of the said William H. W. Cushman and Isaac N. Hardin, from which judgment the said William H. W. Cushman and Isaac N. Hardin prayed for and obtained an appeal to the supreme court of the State of Illinois, which acted as a supersedeas, and the enforcement of the said judgment by execution was stayed until the latter part of June, 1876; then the
26 said judgment was affirmed by the order of said supreme court and a procedendo was issued to the said superior court of Cook county from said supreme court, and an execution issued in apt and proper time against the estate, goods, chattels, lands and tenements of said William H. W. Cushman and Isaac

N. Hardin, which has been returned, no part satisfied; and the said judgment has continued and remained a lien upon the property of said William H. W. Cushman and Isaac N. Hardin from the time the said judgment was rendered as aforesaid, and is still a lien from that time to the present time. That the said judgment was sold and assigned by the said Illinois Starch Company by proper writing of assignment to Frederick E. Bradley, and the said judgment has been duly assigned by the said Fred'k E. Bradley by proper writing of assignment to this defendant; and this defendant claims to have the said judgment satisfied out of the estate of the said William H. W. Cushman. That this defendant disclaims any other or further interest in the said premises. And this defendant having answered all of said bill that it is material or necessary for him to answer, prays to be hence dismissed with his reasonable costs and charges.

JOHN W. WAUGHOP,
In proper person.

Endorsed: Filed M'c'h 5, '78. W. H. Bradley, cl'k.

27 Afterwards, to wit, on the twenty-first day of March, A. D. 1878, a writ of subpœna in chancery issued out of said clerk's office against certain defendants in said entitled cause, which said writ together with the return of the marshal thereon is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA. } *ss:*
Northern District of Illinois. }

THE UNITED STATES OF AMERICA:

To D. W. Graham, Henry Cregar, and Ferdinand Wengi, impleaded with William H. W. Cushman *et al.*, greeting:

We command you, and every of you, that you appear before our judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in said District, on the first Monday in the month of May next, to answer the bill of complaint of the Connecticut Mutual Life Insurance Company heretofore filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois, to execute:

Witness the Hon. Morrison R. Waite, Chief Justice of
28 the Supreme Court of the United States of America, at Chicago, aforesaid, this twenty-first day of March, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d.

[SEAL] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago, aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my District in the following manner, to wit:

Upon D. W. Graham therein named on the 12th day of April, A. D. 1878, also upon Ferdinand Wengi therein named on the 12th day of April, A. D. 1878, by personally delivering to each of them a true copy of the same on the aforesaid day. I also served the same upon the following named defendant, not having been able to find him to serve personally, by leaving a true copy for
29 him at his usual place of abode with an adult person and a member of his family, to wit: Upon Henry Cregar on the 12th day of April, A. D. 1878, with John Wampole.

J. S. HILDRUP, *U. S. Marshal.*
By D. D. SABIN, *Deputy.*

Endorsed: Filed April 17th, A. D. 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the first day of April, A. D. 1878, came said complainant by its solicitors, and filed in said clerk's office its replication to the separate answer of John W. Waughop herein, which said replication is in the words and figures following, to wit:

Replication to answer of John W. Waughop.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

In Chancery. Term No. 1202.

The replication of the Connecticut Mutual Life Insurance Company, complainant, to the separate answer of John W. Waughop.

This repliant saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith, that it does and

will aver, maintain and prove said bill to be true, certain
30 and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in the law, to be replied unto by this repliant, without this that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainants.

Endorsed: Filed this first day of April, 1878. W. H. Bradley, clerk.

Afterwards, to-wit, on the fifth day of April, A. D. 1878, came John J. Mitchell, one of the defendants herein, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to-wit:

Appearance of John J. Mitchell.

UNITED STATES OF AMERICA, } *ss.*
Northern District of Illinois, }

In the United States Circuit Court for the Northern
31 District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN *et al.* } In Chancery. Gen. No. 15,249. Term No. 1202.

I hereby enter my appearance as one of the defendants in the above-entitled cause on condition of being relieved of costs.

JOHN J. MITCHELL.

Endosed: Filed April 5, 1878. W. H. Bradley, clk.

Afterwards, to wit, on the twenty-fourth day of April, A. D. 1878, in the adjourned March term, A. D. 1878 of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN *et al.* } In Chancery.

Now comes the solicitor of the complainant and suggests the

death of the defendant Charles L. Wilson, and thereupon leave is given complainant to file a bill of revivor herein.

32 On the same day, to wit, the twenty-fourth day of April, A. D. 1878, came said complainant by its solicitors and filed in said clerk's office its bill of revivor in said entitled cause, which said bill of revivor is in the words and figures following, to wit:

Bill of Revivor.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

In the Circuit Court of the United States for the Northern District of Illinois.

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Illinois: In Chancery.

The Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the City of Hartford, in the State of Connecticut, and which is a citizen of the State of Connecticut, and at the time of the contract hereinafter set forth and thence hitherto doing business in the State of Illinois, in conformity to the laws thereof, brings this its bill of complaint against Caroline F. Wilson and Louisa F. Wilson, who are citizens of the State of Illinois and residents of said Northern District.

33 And thereupon your orator complains and says, that on the 12th day of December, A. D. 1877, your orator filed its bill of complaint in this court against William H. W. Cushman, Anna C. Cushman, Caroline F. Wilson, wife of Charles L. Wilson, sued by your orator as Mary Wilson, Charles L. Wilson, since deceased, and others, stating therein the due execution and acknowledgment by the said William H. W. Cushman and Anna C. Cushman, his wife, of a certain indenture of mortgage, dated the twenty-ninth day of January, A. D. 1870, for the purpose of securing the payment to your orator of the sum of seventy-five thousand dollars, lawful money of the United States, according to the condition of a certain bond or obligation therein mentioned, and which indenture of mortgage conveyed to your orator, its successors and assigns, forever, all that certain lot, piece or parcel of land, situate, lying and being in the county of Cook and State of Illinois, known and described as being the north half of the northwest quarter of section nine (9) in township thirty-eight (38) north of range fourteen (14) east of the third principal meridian, containing eighty (80) acres, more or less.

And further stating that said William H. W. Cushman made

default in the payment of said sum of money with interest thereon according to the bondition of said bond, and had also made default in the payment of a large amount of taxes and special assessments levied and assessed upon said land;

And further stating that after the making of said mortgage the said land had been sub-divided by said William H.
34 W. Cushman into blocks and lots which said sub-division was and is called "The South Side Homestead Association Addition."

And further stating, that after such subdivision, said William H. W. Cushman and Anna C. Cushman, his wife, had made divers conveyances of certain lots in said subdivision at the time and in the manner as set forth in said bill of complaint.

And further stating, that among said conveyances was a conveyance of part of said mortgaged land, namely, of lot number seven hundred and eighty-four (784), in the South Side Homestead Association addition, to said Charles L. Wilson, since deceased.

And further stating, that all of the defendants therein named, except said William H. W. Cushman and Anna C. Cushman, his wife, and including the said Charles L. Wilson, since deceased, had or claimed to have some interest in said mortgaged premises, and alleged that said interest, if any they or either of them had in said premises, or any part thereof, had accrued subsequent to the lien of said mortgage to your orator, and is subordinate thereto, and that the said defendants ought either to pay what is due to your orator under the several convenants of the said bond and mortgage, or to release their equity of redemption in said mortgaged premises, but they refused so to do.

Said bill of complaint thereupon praying that an account might be taken, under the direction of this court, of what is
35 due and owing to your orator for principal money and interest on its said bond and mortgage, and of all moneys due your orator under any of the covenants therein contained, and that said defendants might be decreed to pay to your orator what might be found due to it on taking such account, together with the costs of suit, by a short day to be appointed by this court for that purpose; or in default thereof, that said premises might be sold by and under the direction of this court, according to the rules and practice of this court; and that the proceeds of such sale might be applied to the payment of the amount due your orator, together with all costs and expenses; and that the said defendants, and all persons claiming under them subsequent to the commencement of this suit, might be foreclosed and barred from all equity of redemption, or claim of, in, and to said mortgaged premises, and every part thereof; and that your orator might have such further and other relief in the premises as

should seem meet and the nature of the case might require, as by said bill of complaint, now on file in this court, will on reference appear.

And your orator further shows that the usual writ of subpœna against all of the defendants in said bill of camplaint named was duly issued and returned by the marshal of the northern district of Illinois, duly served upon said Charles L. Wilson, and Caroline F. Wilson, on the twenty-fourth day of January, A. D. 1878.

And your orator further shows that no other proceed-
36 ings have been had in said cause in relation to said Charles L. Wilson deceased, or said Caroline L. Wilson.

And your orator further shows that on or about the ninth day of March, A. D. 1878, the said defendant Charles L. Wilson departed this life, leaving him surviving his widow, the said defendant Caroline F. Wilson and one only child, the said defendant hereto, Louisa F. Wilson, who is an infant of about ——— years, and leaving a last will and testament which was, on or about the twelfth day of April, 1878, duly admitted to probate in and by the probate court of Cook county, in the State of Illinois, in said northern district of Illinois.

And your orator hereto attaches, marked "Exhibit A," a copy of said last will and testament of said Charles L. Wilson, deceased.

Your orator further shows that said Charles L. Wilson, now deceased, did not dispose of his equity of redemption of and in the said lot number seven hundred and eighty-four in any other manner than by said last will and testament.

Your orator further shows that prior to the death of said Charles L. Wilson the said defendant, Caroline F. Wilson, as the wife of said Charles L. Wilson, had an inchoate right of dower in said lot.

Your orator further shows that in and by said last will and testament the equity of redemption in an undivided half of said lot number seven hundred and eighty-four has become and now is vested in said Caroline F. Wilson in fee, with a contingent remainder in fee to said Louisa F. Wilson, if said Caroline
37 F. Wilson shall die before said Louisa arrives at years of maturity, leaving her surviving; and the equity of redemption in the other undivided half of said lot has become and now is vested in said Caroline F. Wilson in trust for said Louisa F. Wilson in fee simple, with a contingent remainder in fee to said Caroline F. Wilson, if said Louisa shall die before she arrives at years of maturity, leaving said Caroline F. Wilson surviving.

And your orator shows that the interest which said Charles L. Wilson, now deceased, had in said lot has been lawfully and validly transmitted as aforesaid by the said last will and testa-

ment, and is now vested and owned as aforesaid, subject only to be divested in case said Caroline F. Wilson shall elect under and in pursuance of the laws of the State of Illinois to renounce the provisions of said will in her behalf, in which case said Caroline F. Wilson will be entitled to dower in said lot, and the said lot will be deemed and held to have descended to said Louisa F. Wilson as the sole heir of said Charles L. Wilson, subject to the dower of said Caroline F. Wilson.

And your orator further shows that said suit has become abated by the death of the late defendant, said Charles L. Wilson, and your orator is entitled to have said suit revived against said Caroline F. Wilson and Louisa F. Wilson as the devisees of said Charles L. Wilson, and to have said suit prosecuted against them in like manner as if the said late defendant had been still living.

38 To the end, therefore, that the said Caroline F. Wilson and Louisa F. Wilson may show cause, if they can, why the said suit should not stand and be revived against them as such devisees of the late defendant, said Charles L. Wilson as aforesaid, and be in the same plight and condition as the same was in at the time of the abatement thereof, and that the said suit and the proceedings had therein may stand and be revived accordingly, and that the said Caroline F. Wilson and Louisa F. Wilson may answer the said original bill, and that an account may be taken and a decree entered and such other proceedings had as prayed in said original bill.

May it please your honors to grant unto your orator the writ of subpœna to revive the same issuing out of and under the seal of this honorable court to be directed to said Caroline F. Wilson and Louisa F. Wilson, thereby commanding them and each of them by a certain day and under a certain penalty to be therein expressed to be and appear before your honors in this honorable court, and then and there to show cause, if they can, why the said suit and the proceedings therein had against the said Charles L. Wilson should not stand and be revived against them, and be in the same plight and condition as the same was at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to your honors shall seem meet; and your orator will ever pray.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

By ISHAM & LINCOLN, *its Solicitors.*

EDW'D S. ISHAM, *of Counsel.*

39 *Exhibit A.*

I, Charles L. Wilson, of the city of Chicago, do hereby will and bequeath to my wife, Caroline F. Wilson all the

property, real and personal, of which I may die possessed, and constitute her my sole executor without bond or other security.

One-half of said property or the proceeds thereof is to be held in trust for our daughter, Louisa, until she shall arrive at years of maturity. Should either of the above-named parties die before the execution of said trust then the survivor is to be the sole inheritor of my estate.

Signed and sealed at the city of San Antonio, Texas, this 12th day of February, 1878.

CHARLES L. WILSON. [SEAL.]

Witness:

CAROLINE F. MOODY.
W. S. SCOTT.

Proven and admitted to record in open court, April 12, 1878.
J. C. KNICKERBOCKER, *Probate Judge.*

Endorsed on back: State of Illinois, Cook county, *ss.* Proven and admitted to record this twelfth day of April, A. D. 1878. Seth F. Hanchett, clerk.

40 *Letters Testamentary.*

Probate Court of Cook County.

STATE OF ILLINOIS, } *ss:*
Cook County. }

The People of the State of Illinois.

To all persons to whom these presents shall come, greeting:

Know ye, that whereas Charles L. Wilson, late of the county of Cook, and State of Illinois, died on or about the ninth day of March, A. D. 1878, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this State, which may be lost, destroyed or diminished in value if speedy care be not taken of the same, and inasmuch as it appears that Caroline F. Wilson has been appointed executrix in and by the said last will and testament, to execute the same, and to the end that said property may be preserved for those who shall appear to have a legal right or interest therein, and that the said will may be executed according to the request of the said testate we do hereby authorize her the said Caroline F. Wilson as such executrix to collect and secure all and singular the goods and chattels, rights and credits which were of the said Charles L. Wilson at the time of his decease in whosesoever hands or possession the same may be found in this State, and well and truly to
41 perform and fulfill all such duties as may be enjoined upon her by the said will so far as there shall be property, and

the law charge her and in general to do and perform all other acts which now are or may be required of her by law.

Witness: Seth F. Hanchett, clerk of the probate court of said county of Cook, and the seal of the said court this twelfth day of April, A. D. 1878.

[SEAL.] SETH F. HANCHETT, *Clerk.*

STATE OF ILLINOIS, } *ss:*
Cook County. }

I, Seth F. Hanchett, clerk of the probate court of Cook county, in the State aforesaid, do hereby certify that the within is a true and correct copy of the last will and testament of Charles L. Wilson, deceased, and of letters testamentary issued thereon, on the twelfth day of April, A. D. 1878, to Caroline F. Wilson, now in force, as it appears from the originals on file, and from the records of the probate court in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said probate court, at Chicago, in said county, this nineteenth day of April, A. D. 1878.

[SEAL.] SETH F. HANCHETT, *Clerk.*

Endorsed: Filed April 12, A. D. 1878. Seth F. Hanchett, clerk.

Endorsed: Filed April 24, 1878. Wm. H. Bradley, clerk.

42 On the same day, to wit, the twenty-fourth day of April, A. D. 1878, a writ of subpœna issued out of said clerk's office against the defendants named in the bill of revivor filed herein, which said writ of subpœna, with the return of the marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois. }

The United States of America to Caroline Wilson and Louisa F. Wilson, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of June next, to show cause, if any there be, why the certain suit heretofore instituted in said court, wherein the Connecticut Mutual Life Insurance Company was complainant, and Charles L. Wilson, in his lifetime, and others were defendants, and the proceedings had therein, should

not stand and be revived against you and every of you, and be in the same plight and condition as the same were in at the time of the decease of said Charles L. Wilson, then and there to receive and abide by such judgment and decree as shal[l]
43 then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit:

Upon Caroline F. Wilson, therein named, on the 24th day of April, A. D. 1878, by personally delivering to her a true copy of the same on the aforesaid day. I also served the same
44 upon the following-named defendant, not having been able to find her to serve personally, by leaving a true copy for her at her usual place of abode with an adult person and a member of her family, to wit, upon Louisa F. Wilson, on the 24 day of April, A. D. 1878, with Caroline F. Wilson.

J. S. HILDRUP, *U. S. Marshal.*
By R. D. SABIN, *Deputy.*

Endorsed: Filed April 26th, A. D. 1878. W. H. Bradley, clerk.

Afterwards, to wit, on the twenty-sixth day of April, A. D. 1878, came the Newark Savings Institution, of Newark, New Jersey, one of the defendants herein, by its solicitors, and filed in said clerk's office its appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance of Newark Savings Institution.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN and others. } In Chancery, Gen. No. 15,249. Term No. 1202.

45 We hereby enter the appearance of the Newark Savings Institution of Newark, New Jersey, one of the defendants in the above entitled cause.

LYMAN & JACKSON,
Solicitors for the Newark Savings Institution of Newark, New Jersey, Defendants.

Endorsed: Filed April 26, 1878. W. H. Bradley, cl'k.

Afterwards, to wit, on the fourth day of May, A. D. 1878, came Henry Root, one of the defendants herein, by his solicitor, and filed his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance of Henry Root.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN AND OTHERS. } In chancery. Gen. No. 15,249. Term No. 1,202.

I hereby enter the appearance of Henry Root, one of the defendants in the above entitled cause.

JOHN N. CRAWFORD,
Solicitor for Henry Root, Defendant.

46 Endorsed: Filed May 4, '78. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the seventh day of May, A. D. 1878, in the adjourned May term, A. D. 1878, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
WILLIAM H. W. CUSHMAN ET AL. } In chancery.

On motion of complainant's solicitors, leave is given the complainant to amend the bill of complaint herein by making Fernando Jones, Jesse Spalding, Olof Benson, and Nathan H. Walworth, receiver of the City National Bank, who are each and all citizens of the State of Illinois, and residents of the said State, and Lewis C. Ellsworth, receiver, who is a citizen of the State of Colorado and a resident of said State, parties defendant herein.

Afterwards, to wit, on the ninth day of May, A. D. 1878, came the Newark Savings Institution, of Newark, New Jersey, one of the defendants herein, by its solicitors, and filed in
47 said clerk's office its answer to the bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Newark Savings Institution.

United States Circuit Court for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
WILLIAM H. W. CUSHMAN AND OTHERS. } In chancery.

The separate answer of the Newark Savings Institution, of Newark, New Jersey, one of the defendants to the bill of complaint of the Connecticut Mutual Life Insurance Company against it and other defendants.

This defendant, answering, says that it has no knowledge of the truth of the allegations of the complainant's bill of complaint, and, therefore, calls upon it for proof thereof.

Further answering, this defendant says that it is the holder and owner of a judgment rendered by the said circuit court of the United States for the northern district of Illinois, on the fifth day of December, A. D. 1874, for the sum of thirty-one thousand and six dollars and eighty-two cents, and costs of suit, against said William H. W. Cushman and Charles H. Force, and in favor of this defendant; and that said judgment is a lien
48 upon the equity of redemption of the said William H. W. Cushman in and to the lands described in the mortgage mentioned in the bill of complaint in the above entitled cause.

And this defendant submits its rights to the protection of this honorable court, and prays to be hence dismissed, with its reasonable costs, in this behalf sustained.

LYMAN & JACKSON,
Solicitors for Newark Savings Institution.

Endorsed: Filed May 9, '78. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the tenth day of May, 1878, an alias writ of subpœna issued out of said clerk's office against certain of the defendants in said entitled cause, which said alias writ of subpœna, with the return of the marshal thereon, is in the words and figures following, to wit:

Alias Writ of Subpœna.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

The United States of America to Fernando Jones, Jesse Spalding, Olof Benson, and Nathan H. Walworth, receiver of the City National Bank of Chicago, impleaded with William H. W. Cushman and others, greeting:

We command you again and every of you that you ap-
49 pear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of June next, to answer the bill of complaint of the Connecticut Mutual Life [Insurance], heretofore filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this tenth day of May, in the year of Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago, aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

50 *Marshal's return.*

I have served the within writ within my district in the following manner, to wit:

Upon Nathan H. Walworth, receiver of City National Bank of Chicago, therein named, on the 14 day of May, A. D. 1878, by personally delivering to him a true copy of the same on the aforesaid day. I also served the same upon the following-named defendant, not having been able to find him to serve personally, by leaving a true copy for him at his usual place of abode with an adult person and a member of his family, to wit, upon Jesse Spalding, on the 14th day of May, A. D. 1878, with Mrs. Spalding. I did not serve the other defendants, having been unable to find them, or that they had any residence within my district.

J. S. HILDRUP,
U. S. Marshal.
By J. S. STILWELL, *Deputy.*

Endorsed: Filed June 4th, 1878. W. H. Bradley, Clerk.

And afterwards, to wit, on the third day of June, A. D. 1878, came said complainant, by its solicitors, and filed in said clerk's office its replication to the answer of the Newark Savings Institution of Newark, New Jersey, herein, which said replication is in the words and figures following, to wit:

51 *Replication to answer of Newark Savings Institution.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

In the circuit court of the United States for the northern district of Illinois. In chancery. Gen. No. 15249. Term No. 1202.

The replication of the Connecticut Mutual Life Insurance Company, complainant, to the separate answer of the Newark Savings Institution of Newark, NewJersey:

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, saith that it does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied

unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain,
52 and prove as this honorable court shall direct, and humbly prays, as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainant.

Endorsed: Filed this third day of June, 1878. W. H. Bradley, clerk.

Afterwards, to-wit, on the sixth day of July, A. D. 1878, came Caroline F. Wilson, defendant, by her solicitor, and filed in said clerk's office her answer to the bill of complaint herein, which said answer is in the words and figures following, to-wit:

Answer of Caroline F. Wilson.

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, }

In the Circuit Court of the United States, in and for said Northern District.

THE CONNECTICUT MUTUAL LIFE INS. CO.
vs.
CAROLINE F. WILSON, *et al.*

The answer of Caroline F. Wilson, one of the defendants to the bill of complaint of the Connecticut Mutual Life Insurance Company, complainant.

This defendant, saving and reserving to herself all and
53 all manner of exception, &c., answering says:

That she is ignorant of all and singular the allegations in said bill contained except as she is informed by said bill, and therefore can neither admit ner deny the allegations thereof, and for that reason asks for full proof of said allegations.

But further answering this defendant says that she believes it to be true that Charles L. Wilson did, in his lifetime, own that portion of the premises (covered by plaintiffs deed) hereinafter particularly described, and that the same was conveyed to him, the said Charles L. Wilson, for a valid consideration, and that the same should be confirmed to him.

This defendant further answering says that she admits it to be true that the said defendant, William H. W. Cushman, did on or about the 20th day of May, A. D. 1873, convey to Charles L. Wilson, then living, lot number seven hundred and eighty-four (784) in "South Side Homestead Association Addition," so called, as alleged in said bill; but defendant says that subsequent to said conveyance to said Wilson, the said Cushman sold a number of lots, in same addition, to parties other than said Wilson, and

among them lots one, (1) two (2) and three (3) to one James Murphy, and lots nine, (9) ten (10) and (11) to Jacob Loewe and John Schieber!, and defendant claims that said lots should be first sold; and upon information and belief defendant says that there is a large number of lots unincum-
54 bered in said addition, except by the plaintiff's trust deed, and that the equity of said defendant, Cushman, should be sold in all such lots, before the said lot 784 is offered for sale, if said trust deed be found to be a valid first lien on said premises.

Defendant further answering admits that she is the executrix of the last will and testament of said Charles L. Wilson, deceased, and that she and the said Louisa F. Wilson are the sole devisees under said will, and the owners in common of all said Charles L. Wilson's interest in his lifetime in said lot.

Defendant further answering says that the said Louisa F. Wilson is an infant under the age of eighteen years, to wit, six years and nine monihs old at the time of the filing hereof.

And having fully answered the premises so far as she is advised it is material for her to answer, &c., she prays to be hence dismissed with her reasonable costs, &c.

CAROLINE F. WILSON.
By J. E. SMITH, *her Solicitor.*

Endorsed: Filed July 6, 1878. W. H. Bradley, cl'k.

55 Afterwards, to wit, on the second day of September, A. D. 1878, came said complainant, by its solicitors, and filed in said clerk's office its replication to the answer of Caroline F. Wilson herein, which said replication is in the words and figures following, to wit:

Replication to Answer of Caroline F. Wilson.

UNITED STATES OF AMERICA, *Northern District of Illinois.* } ss:

In the Circuit Court of the United States for the Northern District of Illinois.

In Chancery. Gen. No. 15,249. Term No. 1202.

The replication of The Connecticut Mutual Life Insurance Company, complainant, to the separate answer of Caroline F. Wilson.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant for replication thereunto, saith that it does and will aver, maintain, and prove said bill to be true, certain, and

5c

sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be
56 replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainant.

Endorsed: Filed this second day of September, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-eighth day of September, A. D. 1878, in the July term, A. D. 1878, of said Court, in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
WILLIAM H. W. CUSHMAN ET AL. } In Chancery.

On reading the affidavit of Robert T. Lincoln, this day filed in this cause, it appearing to the court that Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George O. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway and Elnathan P. Hatheway, being twenty of the defendants in this cause, cannot either of them be found within said northern district of Illinois, and have not either of them appeared in this cause, either voluntarily or otherwise. It is ordered that said defendants, Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway and Elnathan P. Hatheway appear, plead, answer or demur to the bill of complaint of the complainant in this cause on or before the first Monday of December, A. D. 1878. And it is ordered that a copy of this order be served

upon said defendants, Adeline D. Cushman, Salome Hatheway and Elnathan P. Hatheway on or before the first Monday of November, A. D. 1878. And it appearing to the court that personal service of this order upon said defendants, Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes and Olof Benson, is not practicable, it is ordered that this order be published once a week for six consecutive weeks in the daily edition of the Inter-Ocean, a secular newspaper of general circ-
58 culation, published in the city of Chicago, Illinois. And it is further ordered that a copy of this order be served upon James Murphy and Bernard Nold, being the persons in possession and charge of parcels of the premises described in the bill of complaint in this cause.

Afterwards, to wit, on the first day of November, A. D. 1878, came Lewis C. Ellsworth, receiver, etc., one of the defendants herein, by his solicitor, and filed in said clerk's office his answer to the bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Lewis C. Ellsworth, Receiver, etc.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

United States Circuit Court.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
LEWIS C. ELLSWORTH, Receiver, impleaded with WM. H. W. CUSHMAN *et al.* } In Chancery.

And now comes Lewis C. Ellsworth, receiver, etc., by John H. Batten, Jr., his solicitor, and enters his appearance in the above entitled cause and waives service of process and for
59 answer to said bill of complaint says that on the seventeenth day of December, A. D. 1877, he, as receiver of the First National Bank of Georgetown, Colorado, recovered a judgment against the said William H. Cushman for the sum of sixteen thousand seven hundred and ninety-three and $\frac{97}{100}$ dollars and costs in the United States circuit court for the northern district of Illinois, and respondent asks that whateves rights he may have acquired by said judgment may be protected by this

honorable court and having fully answered, respondent prays to be hence dismissed with his reasonable costs.

LEWIS C. ELLSWORTH, *Receiver.*
By JOHN H. BATTEN, JR.,
His Solicitor.

Endorsed: Filed Nov. 1, 1878. W. H. Bradley, clerk.

Afterwards, to wit, on the fourth day of November, A. D. 1878, came said complainant by its solicitors, and filed in said clerk's office its replication to the answer of Lewis C. Ellsworth, receiver, etc., herein, which said replication is in the words and figures following, to wit:

Replication to Answer of Lewis C. Ellsworth, Receiver, etc.

UNITED STATES OF AMERICA, } ss:
Northern Disirict of Illinois. }

In the Circuit Court of the United States for the Northern District of Illinois.

In Chancery. Gen. No. 15,249. Term No. 1,074.

60 The replication of the Connecticut Mutual Life Insurance Company, complainant, to the separate answer of Lewis C. Ellsworth, receiver.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiences of the answer of the said defendant, for replication thereunto saith, that it does and will aver, maintain and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays, as in and by its said bill it has already prayed.

ISHAM & LINCOLN,
Solicitors for Complainant.

Endorsed: Filed this fourth day of November, 1878. W. H. Bradley, clerk.

61 Afterwards, to wit, on the tenth day of December, A. D. 1878, there was filed in said clerk's office a certificate of publication of a certified copy of the rule entered herein on the twenty-eighth day of September, A. D. 1878, which said certificate of publication is in the words and figures following, to wit:

Certificate of Publication.

United States Circuit Court, Northern District of Illinois.

SATURDAY, *September 28th, A. D.* 1878.

Present, The Hon. Henry W. Blodgett, District Judge.

THE CONNECTICUT MUTTAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN *et al.* } In Chancery, Gen. No. 15249.

On reading the affidavit of Robert T. Lincoln, this day filed in this cause, it appearing to the court that Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, being twenty of the defendants in this cause, cannot either of them
62 be found within the said northern district of Illinois, and have not either of them appeared in this cause either voluntary or otherwise, it is ordered that said defendants, Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLean, George H. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, appear, plead, answer or demur to the bill of complaint of the complainant in this cause, on or before the first Monday of December, A. D., 1878; and it is ordered that a copy of this order be served upon said defendants, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, on or before the first Monday of November, A. D. 1878. And it appearing to the court that personal service of this order upon said defendants, Peter H. Hoeuk, Mary Hoeuk, Herman Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, and Olof Benson is not practicable, it is ordered that this order be published once a week for six consecutive weeks in the daily edition of the Inter Ocean, a secular newspaper of general circulation, published in the city of Chicago, Illinois. And it is further ordered that a copy of this order be served upon James Murphy and Bernard Nold, being the persons in possession and charge of parcels
63 of the premises described in the bill of complaint in this cause.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the 28th day of September, A. D. 1878, in the cause wherein The Connecticut Mutual Life Insurance Company is the complainant, and William H. W. Cushman *et al.* are the defendants, as the same appears from the original records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this seventh day of October, A. D. 1878.

[SEAL.] WM. H. BRADLEY, *Clerk.*

This certifies that a notice, of which the annexed printed slip is a true copy, was published for six successive weeks, to wit, six times in the Friday edition of the Inter Ocean, a newspaper published and printed in the city of Chicago, of general circulation throughout Cook county and State of Illinois; that the date of the first paper containing the same was the 11th day of October, A. D. 1878, that the date of the last paper containing the same was the 15th day of November, A. D. 1878, and that we have received twenty and $\frac{60}{100}$ dollars for publishing the same.

64 Dated at Chicago this 15th day of Nov., 1878.

WM. PENN NIXON, *Publisher.*

Endorsed: Filed December tenth, 1878. Wm. H. Bradley, clerk.

On the same day, to wit, the tenth day of December, A. D. 1878, there was filed in said clerk's office, a proof of service upon Adeline D. Cushman, one of said defendants, of a certified copy of the rule entered herein on the twenty-eighth day of September, A. D. 1878, which said proof of service is in the words and figures following, to wit:

Proof of service upon Adeline D. Cushman.

United States Circuit Court, Northern District of Illinois.

SATURDAY, *September* 28th, A. D. 1878.

Present, the Hon. Henry W. Blodgett, District Judge.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN *et al.* } In chancery, Gen. No. 15249.

On reading the affidavit of Robert T. Lincoln this day filed in

this cause, it appearing to the court that Peter H. Hoeuk, Mary Hoeuk, Herman Wieckmann, Fredericka Wieckmann, Henry W. Kuhlman, Ann McCarty, Orrin Forsythe, Daniel J.
65 Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlore, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, being twenty of the defendants in this cause, cannot either of them be found within said northern district of Illinois, and have not either of them appeared in this cause, either voluntarily or otherwise. It is ordered that said defendants, Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fsedericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Ouin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlore, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, appear, plead, answer or demur to the bill of complaint of the complainant in this cause on or before the first Monday of December, A. D. 1878, and it is ordered that a copy of this order be served upon said defendants, Adeline D. Cushman, Salome Hatheway and Elnathan P. Hatheway, on or before the first Monday of November, A. D. 1878, and it appearing to the court that personal service of this order upon said defendants, Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, and Olof Benson, is not practicable, it is ordered that this order be published once a week for six consecutive
66 weeks in the daily edition of the Inter Ocean, a secular newspaper of general circulation published in the city of Chicago, Illinois. And it is further ordered that a copy of this order be served upon James Murphy and Bernard Nold, being the persons in possession and charge of parcels of the premises described in the bill of complaint in this cause.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the twenty-eighth day of September, A. D. 1878, in the cause wherein the Connecticut Mutual Life Insurance Company is the plaintiff, and William H. W. Cushman *et al.* are the defendants, as the same appears from the original records thereof now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this twelfth day of October, A. D. 1878.

[SEAL.] WM. H. BRADLEY, *Clerk.*

STATE OF COLORADO, *County of Clear Creek,* } *ss:*

Jacob Fillins, being duly sworn, on oath says that he served the order of court, of which the foregoing is a duly certified copy, upon Adeline D. Cushman, therein named, by delivering to her a duly certified copy thereof on the eighteenth day of October, A. D. 1878.

67 JACOB FILLINS.

Subscribed and sworn to before me this 18th day of October, A. D. 1878. LEVI H. SHEPARD,
United States Commissioner.

DISTRICT OF COLORADO, *ss:*

I, Edward F. Bishop, clerk of the district court of the U. S. for the district aforesaid, do hereby certify that Levi H. Shepard, whose genuine signature is subscribed to the above attestation, was, on the 18th Oct. last, and now is, a commissioner of said court, duly appointed and qualified, as appears from the records of said court still in my office remaining.

Witness my hand and the seal of said court, at Denver, Oct. 22d, A. D. 1878.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

Endorsed: Filed Dec. 10, 1878. Wm. H. Bradley, cl'k.

On the same day, to wit, the tenth day of December, A. D. 1878, there was filed in said clerk's office a proof of service upon Salome Hatheway, one of said defendants, of a certified copy of the rule entered herein on the twenty-eighth day of September, A. D. 1878, which said proof of service is in the words and figures following, to wit:

68 United States circuit court, northern district of Illinois.

Saturday, September 28th, 1878.

Present, the Hon. Henry W. Blodgett, district judge.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN *et al.* } In Chancery. Gen. No. 15249.

On reading the affidavit of Robert T. Lincoln, this day filed in this cause, it appearing to the court that Peter H. Hoeuk, Mary

Hoeuk, Herman Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George O. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hathaway, being twenty of the defendants in this cause, cannot either of them be found within said northern district of Illinois, and have not either of them appeared in this cause, either voluntarily or otherwise, it is ordered that said defendants, Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson,
Charles O. McLane, George H. Manlove, W. C. Bronson,
69 George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, appear, plead, answer, or demur to the bill of complaint of the complainant in this cause, on or before the first Monday of December, A. D. 1878. And it is ordered that a copy of this order be served upon said defendants, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, on or before the first Monday of November, A. D. 1878. And it appearing to the court that personal service of this order upon said defendants Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, and Olof Benson is not practicable, it is ordered that this order be published once a week for six consecutive weeks in the daily edition of the Inter-Ocean, a secular newspaper of general circulation published in the city of Chicago, Illinois. And it is further ordered that a copy of this order be served upon James Murphy and Bernard Nold, being the persons in possession and charge of parcels of the premises described in the bill of complaint in this cause.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the 28th day
70 of September, A. D. 1878, in the cause wherein the Connecticut Mutual Life Insurance Company is the complainant and William H. W. Cushman *et al.* are the defendants, as the same appears from the original records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at my office in Chicago, in said district, this seventh day of October, A. D. 1878.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

STATE OF MASSACHUSETTS, *County of Bristol.* } *ss:*

Daniel L. Johnson, being duly sworn, on oath, says that he served the order of court, of which the foregoing is a duly certified copy, upon Salome Hatheway, by delivering to her a duly certified copy thereof, on the nineteenth day of October, A. D. 1878, and also upon Elnathan P. Hatheway, therein named, by delivering to him a duly certified copy thereof, on the nineteenth day of October, A. D. 1878.

DANIEL L. JOHNSON.

Subscribed and sworn to before me this twenty-fourth day of October, A. D. 1878.

[SEAL.] HENRY H. EARL, *Notary Public.*

Endorsed: Filed Dec. 10, 1878. Wm. H. Bradley, cl'k.

71 On the same day, to wit, the tenth day of December, A. D. 1878, there was filed in said clerk's office a proof of service upon James Murphy and Bernhard Nold, defendants, of a certified copy of the rule entered herein, on the twenty-eighth day of September, A. D. 1878, which said proof of service is in the words and figures following, to wit:

Proof of Service of Rule upon James Murphy and Bernard Nold.

In the Circuit Court of the United States for the Northern District of Illinois, *ss:*

THE CONECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* W. H. W. CUSHMAN. } In Chancery. Gen. No. 15249.

STATE OF ILLINOIS, *County of Cook.* } *ss:*

Ward W. Willets, being duly sworn, on oath, says that he served the order of court entered in the above entitled cause on the 28th day of September, A. D. 1878, of which the following is a true copy:

United States Circuit Court, Northern District of Illinois.

Saturday, September 28th, A. D. 1878. Present the Hon. Henry W. Blodgett, district judge.

72 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN *et al.* | In Chancery, Gen. No. 15249.

On reading the affidavit of Robert T. Lincoln, this day filed in this cause, it appearing to the court that Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, being twenty of the defendants in this cause, cannot either of them be found within said northern district of Illinois, and have not either of them appeared in this cause, either voluntarily or otherwise, it is ordered that said defendants Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway appear, plead, answer, or demur to the bill of complaint of the complainant in this cause on or before the first Monday of December, A. D. 1878; and it is ordered that a copy of this order be served upon said defendants, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway on or before the first Monday of November, A.

73 D. 1878. And it appearing to the court that personal service of this order upon said defendants Peter H. Hoeuk, Mary Hoeuk, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, and Olof Benson is not practicable, it is ordered that this order be published once a week for six consecutive weeks in the daily edition of the Inter-Ocean, a secular newspaper of general circulation, published in the city of Chicago, Illinois. And it is further ordered that a copy of this order be served upon James Murphy and Bernard Nold, being the persons in possession and charge of parcels of the premises described in the bill of complaint in this cause.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the 28th day of September, A.

D. 1878, in the cause wherein The Connecticut Mutual Life Insurance Company is the complainant and William H. W. Cushman *et al.* are the defendants, as the same appears from the original records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this seventh day of October, A. D. 1878.

74 [SEAL.] W. H. BRADLEY, *Clerk.*

Upon James Murphy, therein named, by leaving a true copy of said order for him at his usual place of abode with Mrs. Ann Kerns, an adult person, a member of his family, on the 25th day of October, A. D. 1878; and also upon Bernard Nold, therein named, by delivering to him a true copy of said order on the 25th day of October, 1878. WARD B. WILLITS.

Subscribed and sworn to before me, this twenty-fifth day of October, A. D. 1878.

[SEAL.] CHARLES S. SWEET,
Notary Public, Cook County, Illinois.

Endorsed: Filed Dec. 10, 1878. Wm. H. Bradley, clerk.

On the same day, to wit, the tenth day of December, A. D. 1878, came Louis D. Hoards, one of said defendants, by his solicitor, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance of Louis D. Hoards.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois. }

75 In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* WILLIAM H. W. CUSHMAN ET AL. } In Chancery. Gen. No. 15249.

And now comes Louis D. Hoards, one of the defendants in the above entitled cause, by William Burry, his solicitor, and enters his appearance in the said cause, and consents that a decree pro confesso may be entered against him in said cause.

LOUIS D. HOARDS,
By WM. BURRY, *his Solicitor.*

Endorsed: Filed December tenth, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-seventh day of February, A. D. 1879, in the December term, A. D. 1878, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
WILLIAM H. W. CUSHMAN ET AL. } In Chancery.

And now, it appearing to the court, upon the sugges-
76 tion of Messrs. Isham and Lincoln, solicitors for the complainant, that said defendant, William H. W. Cushman departed this life on the twenty-eighth day of October, A. D. 1878, upon reading the bill of revivor filed this day by said complainant, it is ordered that the clerk of this court issue a subpœna requiring Sherman Leland, administrator of the estate of William H. W. Cushman, deceased, to appear on or before the first Monday of April, A. D. 1879, and show cause, if any he has, why the above entitled suit should not be revived against him, and why the said complainant should not have against him the same relief as is in and by said original bill prayed against said William H. W. Cushman, deceased.

On the same day, to wit, the twenty-seventh day of February, A. D. 1879, came said complainant, by its solicitors, and filed in said clerk's office its bill of revivor herein, which said bill of revivor is in the words and figures following, to wit:

Bill of Revivor.

UNITED STATES OF AMERICA,
Northern District of Illinois. } *ss:*

In the Circuit Court of the United States in and for the Northern District of Illinois.

To the judges of the circuit court of the United States for the northern district of Illinois:

77 The Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in said State of Connecticut, and which is a citizen of said State of Connecticut, and at the time of the contract set forth in the bill of complaint hereinafter mentioned, and thence hitherto doing business in the State of Illinois, in conformity to the laws thereof, humbly complains and shows unto your honors that it, your orator, on or about the twelfth day of December, A. D. 1877, ex-

hibited its bill of complaint in this court against William H. W. Cushman, Anna C. Cushman, his wife, the South Side Homestead Association of the city of Chicago, a corporation created by and existing under the laws of the State of Illinois, James Murphy, William D. Kerfoot, William A. Merigold, Mary Murphy, Jacob Loewe, Mary Loewe, John Schieberl, Helena Schieberl, Peter H. Hoeuk, Mary Hoeuk, Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann, Henry W. Kulhmann, Charles L. Wilson, Mary Wilson, Isaac N. Hardin, Gertrude H. Hardin, William H. Cushman, Adeline D. Cushman, Illinois Starch Company, a corporation created by and existing under the laws of the State of Illinois, John R. Adams, Levi Rosenfeld, Jacob Rosenberg, the Newark Savings Institution of Newark, New Jersey, a corporation created by and existing under the laws of the State of New Jersey, Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, the National Bank of Illinois, a corporation created by and existing under the laws of the United States, William M. Derby, John
78 E. Owsley, Jesse Spalding, receiver. The Commercial National Bank, of Chicago, a corporation created by and existing under the laws of the United States. The National City Bank of Ottawa, Illinois, a corporation created by and existing under the laws of the United States. Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Watermann, Henry E. Mallory, Henry C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, S. H. Melvin, J. S. Wallace, Barnhard Nold, John W. Waughop, George Forbes, Henry Root, and Olof Benson, thereby praying that an account might be taken under the direction of this court of what is due and owing to your orator for principal money and interest on the bond and mortgage security in the said bill of complaint mentioned, and that the said defendants might be decreed to pay your orator what might be found due and owing on taking such account as aforesaid, together, with its costs of suit, by a short day to be appointed by this court for that purpose, or in default thereof that the land premises in said bill of complaint described might be sold by and under the direction of this court and the proceeds of such sale be applied to the payment of the amount due your orator as aforesaid, together, with its costs and expenses; and
79 that said defendants and all persons claiming under them might be foreclosed and barred from and of all equity of redemption or claim of, in and to the said mortgaged premises and every part thereof, and that your orator might have such

further or other relief in the premises as to your honors might seem meet.

Your orator further shows that said defendant, William H. W. Cushman, was duly served with process in said cause on the thirty-first day of December, A. D. 1877, and that he departed this life on or about the twenty-eighth day of October, A. D. 1878, without having put in his answer to said bill.

Your orator further shows that said William H. W. Cushman departed this life intestate, leaving surviving him his wife, the said defendant, Anna C. Cushman, one of the defendants to the original bill.

Your orator further shows that it is advised and believes that said defendant, William H. W. Cushman, had prior to the filing of the said original bill of complaint sold and conveyed the said mortgaged premises to William H. Cushman, one of the defendants in said original bill of complaint.

Your orator further shows that as claimed and set forth in said original bill of complaint, said defendant, William H. W. Cushman, was personally liable to your orator for all that might be found due, and owing to your orator on its said mortgage security. Your orator further shows that on or about the ——— day of ———, A. D. 1879, Sherman Le-
80 land was duly appointed by the county court of La-Salle county, in the State of Illinois, the place of residence of said defendant, William H. W. Cushman, to be the administrator of the goods and chattels of said defendant, William H. W. Cushman, deceased, as aforesaid, and that said Sherman Leland has assumed the office of such administrator as aforesaid, and has received and now holds assets of said deceased defendant, William H. W. Cushman.

Your orator further shows that the said suit having become abated by the death of said William H. W. Cushman, your orator is advised that it is entitled to have the same revived and restored against said Sherman Leland, administrator as aforesaid, in the same plight and condition in which it was at the time of the death of said William H. W. Cushman, and to have the same relief against the said Sherman Leland, administrator as aforesaid.

To the end therefore that the said Sherman Leland, administrator as aforesaid, may full, true and perfect answer make, not under oath, answer under oath being hereby waived, to this bill of revivor, to all and singular the premises, and to your orator's said original bill of complaint, and that he may be decreed to come to an account with your orator of what may be due and owing to your orator on said bond and mortgage security, and may pay the same by a short day to be appointed by this honorable court, and that said suit may stand and be revived against said

81 Sherman Leland, administrator, and be in the same plight and condition in which the same was at the time of the decease of said defendant, William H. W. Cushman, or that he, said Sherman Leland, may show cause to the contrary.

May it please your honors to grant unto your orator the writ of subpœna of the United States, requiring the said Sherman Leland, administrator, to appear at a certain day and show cause, if any he has, why said suit should not be revived, and why your orator should not have against him the same relief as is in and by said original bill prayed against said William H. W. Cushman, deceased.

And your orator will ever pray, &c.

THE CONNECTICUT MUTUAL
LIFE INSURANCE COMPANY,
By ISHAM & LINCOLN, *its Solicitors.*

EDWARD S. ISHAM, *of Counsel.*

Endorsed: Filed February 27, 1879. Wm. H. Bradley, clerk.

Afterwards, to wit, on the third day of March, A. D. 1879, a writ of subpœna on said bill of revivor, issued out of said clerk's office, which said writ, with the return of the marshal thereon, is in the word and figures following, to wit:

Writ of Subpœna.

82 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

The United States of America to Sherman Leland, administrator of the estate of William H. W. Cushman, deceased, greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of April next, to show cause, if any you have, why the certain suit known as general number 15249, heretofore instituted in said court, wherein the Connecticut Mutual Life Insurance Company was complainant and William H. W. Cushman in his lifetime, and others, were defendants, should not stand and be revived against you, and why the said complainant should not have against you the same relief as is in and by the original bill of complaint in said cause prayed against the said defendant, William H. W. Cushman, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to execute:

Witness the Hon. Morrison R. Waite, Chief Justice of the

Supreme Court of the United States of America, at Chicago,
83 aforesaid, this third day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and of our independence the 103rd.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit:

Upon Sherman Leland, administrator, &c., therein named on the 13th day of March, A. D. 1879, by personally delivering to him a true copy of the same on the aforesaid day.

JESSE S. HILDRUP, *U. S. Marshal.*
By L. O. GILMAN, *Deputy.*

Endorsed: Filed March 15th, A. D. 1879. W. H. Bradley, clerk.

Afterwards, to wit, on the thirtieth day of April, A. D. 1879, in the adjourned March term, A. D. 1879, of said court in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
vs.
ANNA C. CUSHMAN, The South-Side Association of the city of Chicago, a corporation, etc., James Murphy, William D. Kerfoot, William A. Merigold, Catharine Murphy, Jacob Loewe,
84 Mary Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter H. Hoeuk, Mary Hoeuk, his wife, Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlman, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, Illinois Starch Company, a corporation, etc., John R. Adams, Levi Rosenfield, Jacob Rosenberg, The Newark Savings Institution of Newark, New Jersey, a corporation, etc., Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, The National Bank of Illinois, a corporation, etc., William M. Derby, John E. Owsley, Jesse Spalding, receiver, The Commercial National Bank of Chicago, a cor- } In Chancery.

poration, etc., The National City Bank of Ottawa, Illinois, a corporation, etc., Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Derland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, John W. Waughop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham,
85 Ferdinand Wengi, Henry Cregan, Caroline F. Wilson, executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Olof Benson, Nathan H. Walworth, receiver, etc., Lewis C. Ellsworth, receiver, Sherman Leland, administrator of the estate of William H. W. Cushman, deceased.

It appearing to the court that the complainant in this cause did, on the twenty-seventh day of February, A. D. 1879, file its bill of revivor suggesting the death of William H. W. Cushman, one of the defendants to the original bill of complaint herein, praying that a subpœna in chancery might issue against Sherman Leland, administrator of the estate of said William H. W. Cushman, deceased, directing him to show cause, if any he had, why the said suit should not stand and be revived against him, and why the complainant should not have against him the same relief as was in and by the bill of complaint in said cause prayed against said William H. W. Cushman, deceased; and it appearing to the court that subpœna in chancery was duly issued in accordance with the prayer of said bill of revivor, and was duly served upon the said Sherman Leland, administrator as aforesaid, more than fourteen days prior to the rule day of this court, on the first Monday of April, A. D. 1879. And the said Sherman Leland, administrator as aforesaid, having failed to
86 show cause to the contrary, it is ordered that this suit stand and be revived against him, and that the said complainant have against him the same relief as is in and by said bill of complaint prayed against said William H. W. Cushman, deceased, and that this suit proceed against the other defendants abovenamed, except as to the said defendant Fernando Jones, as to whom the bill of complaint herein is, on motion of Messrs. Isham & Lincoln, solicitors for said complainant, hereby dismissed.

And it appearing to the court that the said defendant, Louisa F. Wilson is an infant under the age of twenty-one years, it is ordered that James Parker be, and he is hereby appointed her guardian *ad litem*.

Afterwards, to wit, on the second day of May, A. D. 1879, came said defendant, Louisa F. Wilson, an infant, by James Parker, her guardian, *ad litem*, and filed in said clerk's office, her answer to the bill of complaint herein, which said answer is in the words and figures following, to wit:

Answer of Louisa F. Wilson.

In the United States Circuit Court for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
ANNA C. CUSHMAN and others.
In Chancery.
Gen. No. 15249.

87 The separate answer of Louisa F. Wilson, an infant, defendant to the bill of complaint of the above named complainant in said cause, by James Parker, her duly appointed guardian *ad litem*.

This defendant, answering by her said guardian *ad litem*, says that she is an infant under the age of twenty-one years, and she submits her rights and interests in said cause to the care and protection of this honorable court.

LOUISA F. WILSON, *Defendant*,
By JAMES PARKER, her guardian *ad litem*.

Endorsed: Filed May 2d, 1879. Wm. H. Bradley, clerk.

Afterwards, to wit, on the third day of May, A. D. 1879, in the adjourned March term, A. D. 1879, of said court in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
vs.
ANNA C. CUSHMAN, the South Side Homestead Association of the City of Chicago, James Murphy, William D. Kerfoot, William A. Merigold, Catherine Murphy, Jacob Loewe, Mary
88 Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter H. Hoeuk, Mary

Hoeuk, his wife, Aaron Gibbs, Louis D. Hoard, Hermann Weickmann, Fredericka Weickmann, Henry W. Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, Illinois Starch Company, John R. Adams, Levi Rosenfeld, Jacob Rosenberg, the Newark Savings Institution of Newark, New Jersey, Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, the National Bank of Illinois, William M. Derby, John E. Owsley, Jesse Spalding, receiver, the Commercial National Bank of Chicago, the National City Bank of Ottawa, Illinois, Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernhard Nold, John W. Waughop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham, Ferdinand Wengi, Henry Cregan, Caroline F. Wilson, executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Olof Benson, Nathan H. Walworth, receiver, etc., Lewis C. Ellsworth, re-
89 ceiver, and Sherman Leland, administrator of the estate of William H. W. Cushman, deceased. } In Chancery.

And now comes the complainant, by Messrs. Isham and Lincoln, its solicitors, and it appearing to the court that the said defendants, the South-Side Homestead Association, of the city of Chicago, James Murphy, William D. Kerfoot, William A. Merigold, Catherine Murphy, Jacob Loewe, Mary Loewe, his wife; John Schieberl, Helena Schieberl, his wife; Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife; William H. Cushman, Illinois Starch Company, John R. Adams, Levi Rosenfeld, Jacob Rosenberg, Edgar Loomis, Martin P. Follett, the National Bank of Illinois, William M. Derby, John E. Owsley, Jesse Spalding, receiver; the Commercial National Bank of Chicago, the National City Bank of Ottawa, Illinois, Washington Libby, John

M. Burdsall, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, D. W. Graham, Ferdinand Wengi, Henry Cregan, Jesse Spalding, Nathan H. Walworth, receiver, etc., have each and all been served with process of subpœna in chancery, in this cause more than twenty days prior to the rule day of this court, on the first Monday of March, A. D. 1879, and have not either of them appeared or made answer herein; that the said defendants, Louis
90 D. Hoard and Henry Root, by their respective solicitors, and the said defendant, John J. Mitchell, in his own proper person, duly entered their appearance in writing in this cause prior to said rule day, but have not either of them made answer herein. And it further appearing to the court that on the twenty-eighth day of September, A. D. 1878, an order was entered in this cause requiring the said defendants, Peter H. Hoeuk, Mary Hoeuk, Hermann Wickmann, Fredericka Wickmann, Henry W. Kuhlmann, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John Terwilliger, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, George Forbes, Olof Benson, Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway, to appear, plead, answer, or demur to the bill of complaint of the complainant in this cause on or before the first Monday in December, A. D. 1878; that due service of said order was had on said Adeline D. Cushman, Salome Hatheway, and Elnathan P. Hatheway within the time limited in said order for such service; that service of said order on the other defendants therein named being impracticable, due publication of said order was made as therein directed. And whereas, each and all of the defendants in said order named have failed to appear, plead, answer, or demur to the complainant's bill of complaint herein; and whereas, by an order entered in this cause on the thirtieth day of April, A. D. 1879, it was ordered that this suit should stand and be revived against said defendant, Sherman Leland, administrator of the estate of William H. W. Cushman, deceased and
91 that the complainant should have against him the same relief, as was by the bill of complaint in this cause prayed against said William H. W. Cushman deceased, and the said Sherman Leland administrator, as aforesaid, having failed to appear and make answer to said bill of complaint, and the said defendants the South Side Homestead Association of the City of Chicago, James Murphy, William D. Kerfoot, William A. Merigold, Catherine Murphy, Jacob Loewe, Mary Loewe his wife, John Schieberl, Helena Schieberl his wife, Peter H. Hoeuk, Mary Hoeuk, Aaron Gibbs, Louis D. Hoard, Hermann Wieck-

mann, Fredericka Wieckmann, Henry W. Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin his wife, William H. Cushman, Adeline D. Cushman, Illinois Starch Company, John R. Adams, Levi Rosenfeld, Jacob Rosenberg, Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, The National Bank of Illinois, William M. Derby, John E. Owsley, Jesse Spalding receiver, The Commercial National Bank of Chicago, The National City Bank of Ottawa, Illinois, Washington Libby, John M. Burdsall, Ann McCarthy, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, George Forbes, Henry Root, John J. Mitchell,
D. W. Graham, Ferdinand Wengi, Henry Cregan, Jesse
92 Spalding, Olof Benson, Nathan H. Walworth, receiver, etc.,
and Sherman Leland, administrator of the estate of William H. W. Cushman, deceased, being now three times severally called in open court to come and plead, answer or demur to the said bill of complaint of the said complainant, come not, but each and all make default in that behalf, it is ordered that as to them and each of them said bill of complaint be and the same is hereby taken as confessed, and it is further on motion of said complainant's solicitors ordered that this cause be referred to Henry W. Bishop, master in chancery of this court, to take proofs and compute the amount due the complainant, and report the same to the court.

Afterwards, to wit, on the ninth day of July, A. D. 1879, came Henry W. Bishop, a master in chancery of said court, and filed in said clerk's office, his report and testimony under the order of reference herein, which said report and testimony are in the words and figures following, to wit:

Master's Report and Testimony.

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
93 ANNA C. CUSHMAN, THE SOUTH-SIDE Homestead Association, of the city of Chicago, a corporation created by and existing under the laws of the State of Illinois; James Murphy, Catherine Murphy, his wife; William D. Kerfoot, William A. Merrigold,

Jacob Loewe, Mary Loewe, his wife; John Schieberl, Helena Schieberl, his wife; Peter H. Hoeuk, Mary Hoeuk, his wife; Illinois Starch Company, a corporation created by and existing under the laws of the State of Illinois; Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann, Fredericka Wieckmann, Henry W. Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife; John R. Adams, Levi Rosenfeld, Jacob Rosenberg, Edgar Loomis, Martin P. Follett, William M. Derby, John E. Owsley, Jesse Spalding, receiver; Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, John W. Waughop, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, The National Bank of Illinois, a corporation created by and existing under the laws of the United States; The Commercial National Bank of Chicago, a corporation created by and existing under the laws of the United States; The National City Bank of Ottawa, Illinois, a corporation created by and existing under the laws of the United States; Salome Hatheway, Elnathan P. Hatheway, George Forbes, The Newark Savings Institution, of Newark, New Jersey, a corporation created by and existing under the laws of the State of New Jersey; Henry Root, William H. Cushman, and Adeline Cushman, his wife; John J. Mitchell, D. W. Graham, Ferdinand Wengi, Henry Cregan, Jesse Spalding, Nathan H. Walworth, receiver of The City National Bank of Chicago; Lewis C. Ellsworth, receiver.

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In Chancery. Original Bill.

SAME *vs.* CAROLINE F. WILSON, EXECUTRIX OF THE ESTATE of Charles L. Wilson, deceased, and Louisa F. Wilson, and Sherman Leland, administrator of the goods and chattels of William H. W. Cushman, deceased.	Bills of Revivor.

Master's Report.

To the honorable the judges of the said court:

The above entitled cause having been referred to me as master in chancery of said court, by an order of said court entered herein on the 3d day of May, A. D. 1879, I do hereby report that having given notice to the parties interested that a hearing for the purposes in said order expressed would be had before me, at my office, No. 33 National Life Building, La Salle street, Chicago, on the 3d day of June, 1879, I was attended on said last named day by R. T. Lincoln, Esquire, of the firm of
95 Isham & Lincoln, of counsel for said complainant, and John W. Waughop, one of the said defendants. The said Robert T. Lincoln testified herein on behalf of said complainant, and his testimony was duly taken, is hereto annexed and made a part hereof.

Said counsel for complainant produced in evidence before me the bills of complaint herein and a bond dated the 29th day of January, A. D. 1870, from William H. W. Cushman unto the Connecticut Mutual Life Insurance Company, and a mortgage dated the 29th day of January, A. D. 1870, between William H. W. Cushman and Anna C. Cushman, his wife, parties of the first part, and The Connecticut Mutual Life Insurance Company, party of the second part, (being the bond and mortgage referred to and described in the bill of complainant herein,) also a power of attorney from William H. W. Cushman and Anna C. Cushman, his wife, to S. B. Gridley, under which said S. B. Gridley executed the mortgage before mentioned, as the attorney-in-fact for Mrs. Cushman.

I was again attended by adjournment on the 9th day of June, A. D. 1879, by said counsel for complainant, and the said defendant, J. W. Waughop, Henry C. Stewart, and Messrs. Fuller, Smith and Morris, of counsel for defendant, Caroline F. Wilson, and by James Parker, the guardian *ad litem* of the infant defendant, Louisa Wilson, said defendant, J. W. Waughop, and said Henry C. Stewart testified herein, and their testimony was duly taken, is hereto annexed and made a part hereof.

96 Said counsel for Caroline F. Wilson and the guardian *ad litem* of Louisa Wilson, produced in evidence before

me a warranty deed from William H. W. Cushman and wife to Charles L. Wilson, dated the 20th day of May, A. D. 1873, conveying to said Charles L. Wilson lot numbered 784 in the South Side Homestead Association; also a certified copy of the last will and testament of said Charles L. Wilson attached to the bill of revivor filed herein on the 24th day of April, A. D. 1878.

I further report that from an examination of the various documents, and testimony, so as aforesaid produced in evidence before me, and from a computation made by me, I find there is due and owing to said complainant on said bond secured by mortgage the sum of seventy-five thousand dollars ($75,000) for the principal, and the sum of twenty-three thousand two hundred and fifty dollars ($23,250) for interest thereon to date of this report, making a total of $98,250.00.

And the sum of ten thousand two hundred and ninety-five dollars and thirty-one cents ($10,295.31) for payments shown to have been made on account of said complainant for taxes and assessments and to redeem from sales which had been made of the premises included in said mortgage and bill of complaint for taxes which had become due and unpaid, and the sum of sixteen hundred and twenty-five dollars and fourteen cents for interest thereon to the date of this report under the covenant con-

97 tained in the said mortgage (making a total of $11,920.45.

The entire amount so found to be due and owing to the said complainant for principal and taxes, and for redemption from tax sales and interest, to the date of this report on said bond, secured by mortgage, and on the covenants therein contained, being one hundred and ten thousand one hundred and seventy dollars and forty-five cents, ($110,170.45.)

I further report that from an examination as aforesaid I find that a judgment was recovered in the Superior court of Cook county, Illinois, on the 7th day of January, A. D. 1874, by the Illinois Starch Company against said William H. W. Cushman and others, and that said judgment has been assigned in writing by said Illinois Starch Company to Frederick E. Bradley on the 8th day of July, A. D. 1876, which said judgment has also been assigned by said Frederick E. Bradley to said defendant, John W. Waughop, on the 19th day of July, A. D. 1876, who is now the owner of the judgment, and that the same is unpaid.

I further report that from the aforesaid examination I find said William H. W. Cushman and his wife did, on the 20th day of May, A. D. 1873, convey to Charles L. Wilson (since deceased) lot numbered 784 in the Southside Homestead Association Addition, being part of the property described in the said mortgage and bill of complaint.

98 I return all the documents used by me in preparing this report, and make the same a part hereof.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court for the Northern District of Illinois.

Dated Chicago, July 9th, 1879.

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Complainant, *vs.* WILLIAM H. W. CUSHMAN *et al.*, Defendants.	In Chancery. Gen. No. 15249.

Testimony taken before Henry W. Bishop, Master in Chancery of said Court.

Tuesday, the 3d day of June, A. D. 1879.—Present: Mr. Robert T. Lincoln, solicitor for complainant, and Mr. Jno. W. Waughop appearing in person *per se.*

Robert T. Lincoln, a witness on behalf of the complainant, being first duly sworn, deposes and says, as follows:

My name is Robert T. Lincoln. I am 35 years of age. I am one of the complainant's solicitors in this cause.

On behalf of the complainant I offer in evidence the
99 bond mentioned in the bill of complaint in this cause, being a bond bearing date the 29th day of January, 1870, and conditioned for the payment of $75,000, with semi-annual interest, at the rate of nine per centum per annum. On the bond it is endorsed that interest has been paid up to the 29th day of January, 1876.

I next offer in evidence the mortgage mentioned in the bill of complaint, being a mortgage bearing date the 29th day of January, 1870, and recorded February 8th, 1870, in book 94 of mortgages, at page 344, in the recorder's office of Cook county, Illinois; and said mortgage, purporting to be executed under the seal of William H. W. Cushman, in person, and by Anna C. Cushman, his wife, by S. B. Gridley, her attorney of record, and purporting to be acknowledged by William H. W. Cushman in person, and by Samuel B. Gridley as the attorney-in-fact of said Anna C. Cushman. Said mortgage conveys to the Connecticut Mutual Life Insurance Company by way of mortgage, to secure the above-mentioned bond, the north half of the northwest quarter of section 9, in township 38, north of range 14, east of the 3d principal meridian, being in the county of Cook, and State of Illinois.

The complainant in this cause found, in December, 1877, that default had been made in the payment of a large amount of the taxes and special assessments levied on the said mortgaged land,

and on various parts thereof, and instructed me to clear
100 up said tax sales as cheaply as possible, and furnished me the money so to do; and, on December 10th, 1877, for the purpose of clearing said land from a tax sale for the fourth instalment of the South Park assessment, the fifth instalment having been paid by the purchaser at said tax sale, I paid the sum of $2,876.65 out of the money of complainant.

On December 11, 1877, a mandate having come from the supreme court of this State affirming the judgment against a large number of lots, a part of said land, for the first instalment of warrant 35, of the town of Lake, and the immediate sale under said judgment being threatened therefor, I paid, to clear up said judgment, out of the money furnished by the complainant, $354.86.

On the same day I paid for the first, second, and third instalment of the South Park assessment on said land, excepting, possibly, one or two lots thereof, which had been paid by the persons claiming as purchasers, the sum of $4,745.32, with complainant's money; and on the same day I paid to purchase up a number of tax titles and tax certificates on various parts of said mortgaged land, said tax titles and tax certificates being held by John McCaffrey, the money paid by me being the money of the complainant. In all these cases I paid to McCaffrey the sum of $2,315.73, and for recording quit-claim deeds from John McCaffrey, $2.75, these quit-claim deeds being used to clear the tax titles in all for the purposes above mentioned out of the
101 money of complainant there was paid, on December 10th, 1877, $2,876.65, and on December 11, 1877, $7,418.66.

I desire to offer in evidence in this cause a power of attorney from William H. W. Cushman, and Anna C. Cushman, his wife, to S. B. Gridley, under which Mr. Gridley executed the mortgage already offered in evidence as the attorney-in-fact of Mrs. Cushman, but in consequence of the engagement in another court of Mr. Campbell, I desire to reserve the putting in of that power of attorney to another time.

Cross-examination.

Q. By Mr. WAUGHOP. Is it not true that the 80 acre tract of land of which you have spoken as being conveyed by the mortgage offered in evidence has been sub-divided into a number of lots since the mortgage was executed; if so, how many lots?

A. I do not know of my own knowledge whether it has been or not. I wish to state that it is taxed in 800 lots, and there appears on the abstract of title the sub-division made after the mortgage in this case, but I have not examined it in the recorder's office, and don't know personally anything about it. I suppose it was, after the making of the mortgage in evidence, divided into

800 lots called the "South Side Homestead Association Addition," the sub-division being made by W. H. W. Cushman.

Q. In your investigation of this title and preparation for this foreclosure have you not discovered that several of these
102 lots, according to that sub-division having been sold to individuals?

A. Since the making of the mortgage.

Q. Since the making of the mortgage?

A. Yes, sir; the bill itself filed in this cause sets forth, and I discovered these sales from an examination of the abstract, and I ascertained from the abstract, having no other information that on December 2, 1872, there was sold to the defendant, Peter H. Hoeuk, lots 395, 396, 397, and 398, and to Charles L. Wilson on May 20, 1873, lot No. 784, and to Thomas Murphy, September 1, 1873, lots No. 1, 2, and 3, and to Jacob Loewe and John Schiebert on December 1, 1873, lots 9, 10 and 11. My recollection is that I did not ascertain in any way that there had been any other sales. All of these sales were made subsequent to the making and recording of the mortgage already introduced in evidence.

Q. Did you discover in your investigations preparatory to making this foreclosure any judgments against the defendant Cushman—William H. W. Cushman?

A. I discovered a large number of judgments.

Q. Can you state which is the first judgment in order that you discovered next to your mortgage?

A. My recollection is—I have not the abstract of title by me, —but my recollection is, that the first judgment rendered against William H. W. Cushman after the recording of the mortgage already introduced in evidence and which remained unsatisfied of record at the time the bill of complaint in this cause
103 was filed, was a judgment in favor of the Illinois Starch Company, which I was informed, I think by yourself, Mr. Waughop, was owned, by assignment, by yourself, and it was for that reason that you were made a party defendant in this cause.

The further taking of testimony in this cause was adjourned until 3 p. m. June 9th, 1879.

ROBERT T. LINCOLN.

Subscribed and sworn to before me this 3d day of June, A. D. 1879.

H. W. BISHOP,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

In the Circuit Court of the United States for the Northern District of Illinois.

CONNECTICUT MUTUAL LIFE INSURANCE CO., Complainant, *vs.* WILLIAM H. W. CUSHMAN, defendant.	In Chancery. Gen. No. 15249.

Testimony taken before Henry W. Bishop, Master in Chancery of said Court.

Monday, the 9th day of June, A. D. 1879. Present, Robert T. Lincoln, on behalf of the complainant, and J. W. Waughop, on behalf of himself.

104 Robert T. Lincoln, already sworn on behalf of complainant, says as follows:

I offer in evidence a certified copy of a power of attorney executed by Wm. H. W. Cushman and Anna C. Cushman, his wife, to Samuel B. Gridley, the said certified copy being certified by Stepen Arnold, recorder of La Salle county, to be a true, full, and correct copy of an instrument recorded in the recorder's office of La Salle county, in book 125 of records, at pages 624 and 625, said certificate being under the official seal of said recorder.

Henry C. Stewart, a witness on John W. Waughop, being first duly sworn, was examined in chief by Mr. J. W. Waughop, and deposes and says as follows:

Int. Please state your name.
Ans. My name is Henry C. Stewart.
Q. Where are you employed?
A. In the clerk's office of the superior court of Cook county.
Q. [Book produced.] What book is this?
A. It is one of the records of the clerk's office of the superior court.
Q. What is the number of the book?
A. Book No. 8.
Q. Common law records?
A. Common law records, page 484.
Q. This contains an order?
A. Yes. This contains an order of final judgment.
Q. Against whom?
105 A. William H. W. Cushman and Isaac N. Hardin.
Q. In favor of?
A. Illinois Starch Company.
Q. In case?
A. 237239, general number.
Q. Now, will you please read that slowly?

A. Do you want the title?

This day again comes the parties to this suit by their attorneys aforesaid, and the court, the Honorable Theodore D. Murphy presiding, having heard all the evidence produced in said case, the arguments of counsel, and being fully advised by counsel finds and issue for the plaintiff, and assesses their damages herein to the sum of $2053.21. Therefore, it is considered by the court that the plaintiff do have and recover of and from the defendants its said damages of $2053.21 in form as aforesaid, by court assessed, together with its costs and charges in its behalf.

Will you have the execution therefor?

"And the defendant entering their exceptions herein, appear and appeal from the judgment of this court to the supreme court of this State, which is allowed to them in filing their appeal bond in the penalty of $4,000, with surety thereon, to be approved by the clerk of this court, and appeal and exceptions within thirty days from this date."

Q. Now, what was the date of that judgment, as appears by the record?

A. January 7th.

Q. What year?

106 A. 1873.

Q. In 1874?

A. January 7, 1874—it must be; well, this is 1873, all the way through. Let us see; January 7, 1874; are there a number of suits of that same title.

By Mr. LINCOLN: No; the general number of that will correspond with the number of the package of papers.

A. It does; but he carries his date right straight through; well, here is 1874, coming before this.

Q. Was this judgment rendered the same year?

A. The judgment is rendered on January 7, 1874, by the file wrapper. It is the correct date with the exception of the year, which is evidently a mistake; for here it commenced 1874, the first of the month, and here he runs along with 1873.

Q. What was the date on which this judgment was rendered?

A. January 7, 1874.

Q. Look at the papers now shown you and state what they are.

A. They are the filings in the case of the Illinois Starch Company *vs.* Cushman *et al.*

Q. In what court?

A. The superior court of Cook county.

Q. What number?

A. 37239.

Q. Look at that particular paper; state what that is?

A. That is a mandate from the supreme court.

Q. Please read it, or state the substance of it. You say it is an order remanding this case?

107 A. Well, it is an order remanding this case on the same being affirmed back to the superior court from the supreme court of the State of Illinois.

MR. LINCOLN: What is the date?

A. July 15th, 1876.

Q. When is it filed in your court?

A. May 26th, 1877.

Q. Look at the paper now shown you. State what that is.

A. That is an execution.

Q. In what suit?

A. The Illinois Starch Company *vs.* Cushman *et al.*

Q. What is the number of it?

A. 37239.

Q. When was it issued?

A. It was issued on June 1st, 1877.

Q. When was it returned?

A. The 30th day of August, 1877.

Q. Please read the return, or state what it is.

A. Returned—No property found. By the sheriff of Cook county.

Q. By MR. LINCOLN: What is the date of that return, Mr. Stewart?

A. June 1st, 1877.

Q. I would like to have you identify that among the findings. What paper is that?

A. Narr—common counts.

Q. Is that one of the files in this case?

Q. Yes, sir.

Q. Look at this paper.

A. That is the plea.

108 Q. That is the plea of similitur?

A. Yes, sir.

Q. That is also in the files?

A. Yes, sir.

HENRY C. STEWART.

Subscribed and sworn to before me.

H. W. BISHOP, *Master, &c.*

John W. Waughop, being duly sworn in his own behalf, says:

I offer in evidence the execution and fee bill from the supreme court, dated July 15, 1876, for the sum of $16.95, plaintiff and defendant's costs. And I also state that this judgment has been assigned in writing by the Illinois Starch Company to Frederick E. Bradley the 8th day of July, 1876. The assignment is in writing, and is now produced and offered in evidence. You may now identify this. (Paper produced, and marked Ex. A., C. L. B.)

MR. LINCOLN: Is it assigned from Mr. Bradley to you?

A. Yes; (I suppose, to make it proper proof, the writings ought to be put in the case, but it can be identified;) which judgment has been assigned to me by the said Frederick E. Bradley, on July 19, 1876, and I now produce the assignment, and offer it in evidence. (Marked Ex. B., C. L. B.)

I am the owner of the judgment, and the same is unpaid.

JOHN W. WAUGHOP.

Sworn to before me.

H. W. BISHOP, *Master, &c.*

109 Thereupon Messrs. Fuller, Smith & Morris, solicitors for the defendant, Caroline F. Wilson, and James Parker, *guardian ad litem* of the infant defendant Louisa Wilson on behalf of said Caroline F. Wilson and Louisa Wilson offered in evidence a warranty deed from William H. W. Cushman and wife to Charles L. Wilson, bearing date May 20, A. D. 1873, and recorded in the recorder's office of Cook County, Illinois, August 6, 1873, in book 317 of records, at page 83, conveying to said Charles L. Wilson, lot numbered 784 in the South Side Homestead Association Addition, being part of the property described in the bill of complaint in this cause, said warranty deed being duly acknowledged according to law by said William H. W. Cushman and Anna Cushman by Samuel B. Gridley, their attorney-in-fact.

There was next offered in evidence in behalf of said Caroline F. Wilson and Louisa Wilson a certified copy of the last will and testament of said Charles L. Wilson, which certified copy is attached to the bill of revivor filed in this cause on the 24th day of April, A. D. 1878.

110 Know all men by these presents, that I, William H. W. Cushman of Ottawa, in the county of La Salle and State of Illinois, am held and firmly bound unto the Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, in the penal sum of one hundred and fifty thousand ($150,000) dollars, lawful money of the United States of America, to be paid unto The Connecticut Mutual Life Insurance Company, its successors or assigns, for which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators firmly by these presents.

Sealed with my seal, and dated at the city of Chicago, this twenty-ninth day of January, in the year of our Lord, one thousand eight hundred and seventy-

The condition of this obligation is such, that if the above bounden William H. W. Cushman, his heirs, executors, or

administrators shall and do well and truly pay, or cause to be paid, unto the above named The Connecticut Mutual Life Insurance Company, its successors or assigns, the principal sum of seventy-five thousand ($75,000) dollars, on the twenty-ninth day of January, which will be in the year of our Lord one thousand eight hundred and seventy-five, with interest for the same to be computed from the day of the date hereof, at and after the rate of nine per centum per annum, which said interest shall be paid half-yearly, to wit: on the twenty-ninth day of each of the months of July and January, which will be in each and every year until the said principal sum shall be fully paid; which said interest payments, until the said principal sum shall become due, are specified in and further secured by ten (10) coupons given herewith, and the said payments, both of principal and interest, shall be made at such place, in the city of New York, in the State of New York, as the said The Connecticut Mutual Life Insurance Company, its successors or assigns may, from time to time, in writing, appoint, and in default of such appointment, then, at the office of said The Connecticut Mutual Life Insurance Company, in the city of Hartford, in the State of Connecticut, then, and in such case, this bond to be void, otherwise to remain in full force and virtue.

111 Provided, nevertheless, and it is hereby expressly agreed and fully understood, that if default be made in the payment of any of the interest on the principal sum above mentioned, payable half-yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of thirty days after the same shall become due and payable, according to the above condition, then and in that case, the principal sum above mentioned, together with all arrearages of interest thereon, shall, at the option of the said The Connecticut Mutual Life Insurance Company, its successors or assigns, thereupon become due and payable, and shall be collectible, without notice, immediately, or at any time after such default, anything hereinbefore contained to the contrary notwithstanding.

It is hereby expressly declared, that this bond or obligation is made under, and is, in all respects, to be construed by the laws of the State of Illinois, and is given for an actual loan of money, made at the city of Chicago, aforesaid, by the said The Connecticut Mutual Life Insurance company, to the said William H. W. Cushman, on the day of the date hereof. This bond is secured to be paid by mortgage bearing even date herewith, which is duly stamped according to law; the stamp thereto affixed and cancelled being of the value of seventy-five dollars.

WM. H. W. CUSHMAN. [SEAL.]

1875, July 9. Interest paid on the within bond to July 29, 1875, $3,375.

1876, February 26, received on account interest due January 29, 1876, $33.75. (Balance due $22.78.)

112 Whereas I, William H. W. Cushman, of Ottawa, in the county of La Salle and State of Illinois, am justly indebted to the Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, in the sum of seventy-five thousand ($75,000) dollars, an actual loan of money made to me in Chicago, and secured to be paid by my bond, bearing even date herewith, payable in the penal sum of one hundred and fifty thousand ($150,000) dollars, but conditioned in effect for the payment of the principal sum of seventy-five thousand ($75,000) dollars, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and seventy-five, with interest for the same at the rate of nine per centum per annum, payable half-yearly, both principal and interest payable at such place in the city of New York, in the State of New York, as the said The Connecticut Mutual Life Insurance Company, its successors or assigns, may, from time to time, in writing appoint; and in default of such appointment, then at the office of said The Connecticut Mutual Life Insurance Company, in the city of Hartford, in the State of Connecticut, with a proviso thereunder written that if default be made in the payment of any of the interest, payable half-yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of thirty days after the same shall become due and payable, according to said condition, then and in that case the principal sum aforesaid, with all arrearages of interest thereon, shall, at the option of the said The Connecticut Mutual Life Insurance Company, its successors or assigns, thereupon become due and payable, and shall be collectible, without notice, immediately, or at at any time after any such default, anything thereinbefore contained to the contrary notwithstanding.

Now, therefore, know all men by these presents that I, the said William H. W. Cushman, for the purpose of securing the prompt and punctual payment of said bond or obligation, and also the prompt and punctual payment of the interest, payable half-yearly, as aforesaid, at the time and times, and at the places respectively mentioned in said bond, have made, constituted and appointed, and by these presents do make, constitute and appoint Mark Skinner, or any other attorney of any court of record in the United States of America, to be my true and lawful attorney irrevocable, for me and in my name, place and stead, to appear in any court of record, in term time or vacation, in any of the

States, Territories, or Districts of the United States at any time after default shall have been made in the payment of the principal, or either or any of the payments of interest to be made half-yearly as aforesaid, according to the true intent and meaning of said condition of said bond and the proviso thereto, to waive service of process and confess a judgment in favor of the said The Connecticut Mutual Life Insurance Company, its successors or assigns, upon said bond, for so much of principal and in-
113 terest as shall at the time of the entry of such judgment be and remain unpaid upon said bond, due or not due, according to the true intent and meaning of the condition of said bond and the proviso thereto, together with all costs, charges, and twenty-five dollars in addition thereto, as an attorney's fee: and, for such purpose, to file a cognovit for such amounts, with an agreement therein that execution may issue forthwith, and that no writ of error nor appeal shall be prosecuted upon such judgment, nor any bill in equity filed, nor any other proceeding had to interfere in any manner with the operation of such judgment, nor any motion made to quash, set aside or stay any execution that may be issued thereon: And further, the said attorney is hereby empowered, at his option, in case of default being made or suffered in the payment of any of the interest coupons given with said bond, when due and payable, to waive service of process, and confess a judgment in favor of said The Connecticut Mutual Life Insurance Company, its successors or assigns, upon such of said coupons as shall at such time be due by the terms thereof, and then remaining unpaid; for so much money as may then be due thereon, according to the tenor thereof, together with all costs and charges, and ten dollars in addition for each of such coupons, as an attorney's fee.

And for the purpose of confessing any such judgment or judgments upon any of the coupons given with said bond, as above provided, a copy of this power of attorney may be filed in the office of the clerk of any court of record, and when so filed and certified to by such clerk, shall be deemed and taken as sufficient for all the purposes contemplated by these original presents, and shall have the same force and effect as would this original warrant of attorney, if so filed as aforesaid, the said filing whereof being hereby expressly waived; and to release all errors that may intervene in the entering up of all or any of said judgments, or issuing execution or executions thereon, or in any of the proceedings had thereunder: Hereby ratifying and confirming all that my said attorney may legally do under and by virtue hereof.

Witness my hand and seal, at Chicago aforesaid, this twenty-ninth day of January, A. D. 1870.

WM. H. W. CUSHMAN. [SEAL.]

114 *Mortgage.*

This indenture, made this twenty-ninth day of January in the year of our Lord, one thousand eight hundred and seventy, between William H. W. Cushman and Anna C. Cushman, his wife, of Ottawa, in the county of LaSalle, in the State of Illinois, parties of the first part, and the Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located and doing business in the city of Hartford, in the State of Connecticut, party of the second part:

Whereas the said William H. W. Cushman is justly indebted unto the said party of the second part in the sum of seventy-five thousand ($75,000) dollars, lawful money of the United States of America, an actual loan of money this day made by said party of the second part, to the said William H. W. Cushman, at the city of Chicago, in conformity to and under, and to be construed by the laws of the State of Illinois, secured to be paid by the certain bond or obligation of the said William H. W. Cushman bearing even date herewith in the penal sum of one hundred and fifty thousand dollars, conditioned for the payment unto the above-named party of the second part, its successors or assigns of the principal sum of seventy-five thousand ($75,000) dollars, on the twenty-ninth day of January, which will be in the year of our Lord, one thousand eight hundred and seventy-five, with
115 interest for the same to be computed from the day of the date thereof at and after the rate of nine per centum per annum, which said interest shall be paid half yearly, to wit; on the twenty-ninth day of each of the months of July and January, which will be in each and every year until the said principal sum shall be fully paid, which said interest payments, until the said principal sum shall become due are specified in and further secured by ten (10) coupons given therewith, and the said payments both of principal and interest, shall be made at such place in the city of New York, in the State of New York, as the said the Connecticut Mutual Life Insurance Company its successors or assigns may from time to time in writing appoint; and in default of such appointment then at the office of said the Connecticut Mutual Life Insurance Company in the city of Hartford, in the State of Connecticut, with a proviso thereunder written, whereby it is expressly agreed and fully understood, that if default be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of thirty days after the same shall become due and payable according to the above conditions, then, and in that case, the principal sum above mentioned, together with all arrearages of interest thereon, shall at the option of the said the Connecticut Mutual

Life Insurance Company, its successors or assigns thereupon become due and payable, and shall be collectible without
116 notice immediately, or at any time after any such default, anything therein before contained to the contrary notwithstanding, as by the said bond and the condition thereof, and the proviso thereunder written, reference being thereto had, may more fully appear.

Now, therefore, this indenture witnesseth that the said parties of the first part, for the better securing the payment of the said sum of money mentioned in the condition of said bond with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, its successors and assigns for ever, all that certain lot, piece, or parcel of land situate, lying and being in the county of Cook and State of Illinois, known and described as being the north half of the northwest quarter of section (9), in township thirty-eight (38) north of range fourteen (14) east of the third principal meridian, containing eighty (80) acres, more or less, together with all and singular the tenements, hereditaments, and appurtenances hereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, and right of dower,
117 property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances.

To have and to hold the above granted, bargained, and described premises with the appurtenances, unto the said party of the second part, its successors and assigns for ever

Provided always, and these presents are upon this express condition, nevertheless, that if the said parties of the first part, their heirs, executors, or administrators, shall and do, well and truly, pay or cause to be paid unto the said party of the second part, its successors or assigns, the said principal sum of money mentioned in the condition of said bond, and the interest thereon, at the time and times respectively, and in the manner mentioned in the condition of said bond, according to the true intent and meaning thereof, and shall and do promptly and faithfully fulfil and perform all the covenants and agreements hereinafter mentioned, that, then, and from thenceforth these presents and the estate hereby granted shall cease, determine, and be utterly null and void, anything hereinbefore contained to the contrary notwith-

standing. And the said William H. W. Cushman, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, its successors and assigns, that he will well and truly pay unto the said party of the second part, its successors or assigns, the said principal sum of money mentioned in the condition of said bond, and the interest
118 thereon according to the said condition, and also that he will not, at any time hereafter, until the said principal sum and the interest thereon shall be fully paid, suffer said premises, or any portion thereof, to be sold for any tax or assessment whatsoever, nor will he do or permit to be done to, in, upon, or about said premises, anything that may in any wise tend to impair the value thereof, or to weaken, diminish, or impair the security intended to be effected under and by virtue of this instrument. And in the event that the said party of the second part, its successors or assigns, shall expend any money, either to save said premises or any part thereof from any sale for taxes or assessments, or to redeem the same from any such sale, or to protect the title or possession of said premises, then all such money so expended shall be a new and additional principal sum of money secured by this instrument, and shall be payable and may be collected immediately or at any time thereafter, with interest thereon at the rate of ten per centum per annum from the time of so paying the same. But it is hereby expressly agreed and understood, by and between the parties to these presents, that if default shall be made in the payment of the said principal sum of money above mentioned, or of the interest that may grow due thereon, or of any part thereof, at the time and times respectively when the same ought to be paid, as set forth in the said condition of said bond, or if the said William H. W.
119 Cushman, his heirs, executors, or administrators shall, at any time hereafter, until said principal sum and all arrearages of interest thereon shall be fully paid, suffer said premises, or any part thereof, to be sold for any tax or assessment whatsoever, or shall do, or permit to be done to, in, upon, or about said premises, or any part thereof, anything that may in anywise tend to diminish the value thereof, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or shall fail in anywise promptly and faithfully to fulfill, keep, and perform, as well in spirit as in letter, all and singular the covenants and agreements contained in these presents, or if either or any of said covenants and agreements shall at any time be broken in any respect whatsoever, that then and from thenceforth it shall be lawful for the said party of the second part, its successors or assigns, either in person or by attorney, to sell and dispose of all and singular the said premises

hereby granted or intended so to be, and all benefit and equity of redemption of the said parties of the first part, their heirs or assigns therein, at public auction, having first given thirty days' notice of the time and place of such sale, (such sale to be made in the city of Chicago aforesaid,) by advertisement in any one of the daily newspapers that may at that time be published in said city of Chicago, personal notice of such sale to said parties of the first part, their heirs, executors, administrators or assigns, or any and all persons claiming by, through, or under them being
120 hereby expressly waived and excused, and either in the name of the said party of the second part, its successors or assigns, or at its or their option, as the attorney of the said parties of the first part for that purpose by these presents duly and irrevocably authorized, constituted and appointed to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and all the recitals that may be contained in such deed or deeds, setting forth the fact of due notice, advertisement, and sale, and any and all such other facts and statements as may be proper to evidence the legality of such sale and conveyance, and that the same had been duly made in all respects so as to meet all the requirements herein contained or arising in law, and as may be necessary to convey a good title, shall be deemed to be true and shall be considered and taken as prima-facie evidence of all the facts and matters set forth in such recitals, and such deed or deeds, whether made in the name of the said parties of the first part, or in the name or names of the said party of the second part, its successors or assigns, shall be effectual to pass the title; and out of the money arising from such sale to pay and retain: first, all the costs, charges, and expenses of such advertisement, sale, and conveyance; second, all money and sums of money which said party of the second part, its successors or assigns, may, at any time before such sale pay or expend to
121 redeem said above described premises from any sale or sales for taxes or assessments, or to save the same from such sale, or to protect the title or possession of said premises, or any part thereof, with interest on all money so advanced or expended, at the rate of ten per centum per annum, from the time of so paying or expending the same up to the time of such sale; third, all of said principal, money, and accrued interest thereon that shall at the time of such sale remain unpaid, whether due or not due; and, fourth, rendering the overplus of the purchase-money, if any there be, unto the said William H. W. Cushman, his heirs or assigns, on reasonable request, which sale so to be made shall be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them or any of them.

It is expressly understood and agreed by and between the parties to these presents that in case of a sale of said premises under the power of sale hereinbefore mentioned, the said party of the second part, its successors or assigns, or attorney, may sell said premises, either in parcels or altogether, as it or they shall see fit; and may also adjourn said sale, if it or they shall see fit, from time to time, at its or their discretion.

And the said parties of the first part, for the consideration above mentioned, do hereby expressly waive and release all right and benefit which they have in and to said premises or to which they may be entitled under and by virtue of an act
122 entitled "An act to exempt homesteads from sale on execution," approved February 11th, A. D. 1851, and also an act entitled "An act to amend an act to exempt homesteads from sale on execution," approved February 17th, A. D. 1857, as well as any and all other acts of a like character, or for a similar purpose.

And the said William H. W. Cushman, for himself, his heirs, executors, and administrators, doth covenant, bargain and agree to and with the said party of the second part, its successors and assigns, that he is well seized of the premises above described, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple, and hath good right, full power and lawful authority, to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that the same are free from all other and former grants, mortgages, liens, incumbrances, and tax sales of any and every name, kind, nature or description whatsoever, and against all and every person or persons, lawfully claiming or to claim, the whole or any part thereof, will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, at Chicago aforesaid, the day and year first above written.

WM. H. W. CUSHMAN, [SEAL.]
ANNA C. CUSHMAN, [SEAL.]
By S. B. GRIDLEY,
Her Attorney of Record.

[Int. revenue stamps $75.00, cancelled.

123 STATE OF ILLINOIS, }
County of La Salle, City of Ottawa, } ss:

I, Alex. T. Cameron, a notary public in and for, and residing in the city of Ottawa, in said county and State, do hereby certify that William H. W. Cushman, and Samuel B. Gridley, as attorney in fact of Anna C. Cushman, wife of said William H. W. Cushman, who are personally known to me to be the real persons whose names are subscribed to the foregoing instrument in

writing, appeared in person before me this day, and severally acknowledged that they executed and delivered the same, as their free and voluntary act, for the uses and purposes therein set forth, and the said Samuel B. Gridley, then and there acknowledged that he signed, sealed, and delivered the said instrument in writing as the free and voluntary act of the said Anna C. Cushman, wife of the said William H. W. Cushman, and relinquished her dower to the lands and tenements therein mentioned, without fear or compulsion of her said husband, and that she does not wish to retract the same.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at Ottawa, aforesaid, this fourth day of February, in the year of our Lord, one thousand eight hundred and seventy.

[SEAL.] ALEX. T. CAMERON,
Notary Public,

124 Endorsed: Filed for record in the recorder's office in Cook county, Illinois, on the 8th day of February, A. D. 1870, and duly recorded in book 94, of mortgages, page 344, No. 40868. NORMAN T. GASSETTE,
Recorder.

Certified Copy Power of Attorney.

Know all men by these presents that we, William H. W. Cushman and Anna C. Cushman, his wife, of the city of Ottawa in the county of La Salle and State of Illinois, have made, constitued, and appointed, and by these presents do make, constitute, and appoint Samuel B. Gridley, of Ottawa aforesaid, our true and lawful attorney for us and each of us, and in our names, places, and steads to make, execute, sign, seal, stamp and deliver any and all deeds, mortgages, trust deeds, bonds, contracts and release deeds, so as fully, completely, and effectually to convey and assure by any and all manner of covenants all the right, title, interest, claim, dower, equity of redemption, homestead and estate of us or either of us which we or either of us now have or may hereafter acquire in and to any and all lots, pieces, tracts and parcels of land and premises in the State of Illinois, and in any and all the States and Territories of the United States of America to any and all persons whatsoever, hereby giving and granting unto our said attorney full power and authority to do and
125 perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we or either of us might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof we have hereunto set our hands and seals the first day of June in the year one thousand eight hundred and sixty-nine.

WILLIAM W. H. CUSHMAN. [SEAL.]
ANNA C. CUSHMAN. [SEAL.]

Sealed and delivered in presence of—
NOAH C. PERKINS.
SUSIE L. CUSHMAN.

[U. S. stamp, $1.00.]

MASSSACHUSETTS, } ss:
Plymouth County. }

On the fourteenth day of July, eighteen hundred and sixty-nine, before me, Noah C. Perkins, justice of the peace of the county of Plymouth, in the State of Massachusets, appeared William H. W. Cushman and Anna C. Cushman, personally known to me to be the real persons whose names are subscribed to the foregoing power of attorney as having executed the same, and then acknowledged the execution thereof as their free act and deed. And I further certify that said Anna C. Cushman is above eighteen years of age.

Given under my hand. NOAH C. PERKINS.

126 COMMONWEATH OF MASSACHUSETTS,
SECRETARY'S OFFICE, BOSTON, *July* 29, 1869.

I hereby certify that at the date of the attestation hereto annexed Noah C. Perkins was a justice of the peace for the county of Plymouth, in the said commonwealth, duly commissioned and constituted, and that to his acts and attestations as such full faith and credit are and ought to be given in and out of court. The annexed instrument is executed and acknowledged in conformity to the laws of said commonwealth, and I believe the signature of said Perkins to be genuine.

In testimony of which I have hereunto affixed the seal of the commonwealth the date first above written.

[SEAL.] OLIVER W. AMES,
Secretary of the Commonwealth.

(Filed Aug. 27th, A. D. 1869, at 2¾ o'c. p. m.)

STATE OF ILLINOIS, } ss:
County of La Salle. }

I, Stephen Arnold, recorder of deeds in and for said county and State, do hereby certify that the above and foregoing is a true, full, and correct copy of an instrument, being a power of attorney from Wm. H. W. Cushman and wife to Samuel B. Grid-

ley, recorded on pages 624 and 625 in book 125 of records in my office.

Witness my hand and official seal this 5th day of June, 1879.

[SEAL.] STEPHEN ARNOLD, *Recorder.*

Endorsed: Filed July 9, 1879. W. H. Bradley, clk.

127 Afterwards, to wit, on the fourteenth day of July, A. D. 1879, in the July Term A. D. 1879, of said court in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

Decree of Sale.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,

vs.

ANNA C. CUSHMAN, The South Side Homestead Association of the City of Chicago, a corporation, etc., James Murphy, Catherine Murphy, his wife, William D. Kerfoot, William A. Merigold, Jacob Loewe, Mary Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter Hoeuk, Mary Hoeuk, his wife, Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann, Fredericka Wieckmann, his wife, Henry W. Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, Illinois Starch Company, a corporation, etc., John R. Adams, Levi Rosenfeld, Jacob Rosenberg, The Newark Savings Institution of Newark, New Jersey, a corporation, etc., Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, The National Bank of Illinois, a corporation, etc., William M. Derby, John E. Owsley, Jesse Spalding, receiver, The Commercial National Bank of Chicago, a corporation, etc., The National City Bank of Ottawa, Illinois, a corporation, etc., Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilli-
128 ger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. Mc-

} In chancery.

Lane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, John W. Waughop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham, Ferdinand Wengi, Henry Cregan, Caroline F. Wilson, executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Nathan H. Walworth, receiver of the City National Bank of Chicago, Lewis C. Ellsworth, receiver, Sherman Leland, administrator of the estate of William H. W. Cushman, deceased.

This cause having this day been brought on to be heard upon the bill of complaint filed herein taken as confessed by all the defendants, except the said defendants Anna C. Cushman, Caroline F. Wilson, John H. Waughop, The Newark Savings Institution of Newark, New Jersey, Lewis C. Ellsworth, receiver, and said infant defendant Louisa F. Wilson, and upon the several answers of said last named defendants and the replications of the complainant thereto, and upon the report of Henry W. Bishop, Esq., master in chancery of this court, which report bears date the ninth day of July, A. D. 1879, and was made in pursuance of an order of this court heretofore made in this cause referring it to the said master to take the proofs in said cause and to compute the amount due the complainant upon the bond and the mortgage,
129 and the covenants therein contained, mentioned, and set forth in said bill of complaint, and which report was filed herein on the ninth day of July, A. D. 1879, and upon the testimony taken in this cause and filed with said report.

On reading said report, upon motion of counsel for the complainant, no cause to the contrary having been shown, it is ordered, adjudged, and decreed, and this court, by virtue of the authority in it vested, doth order, adjudge, and decree that the said report and all things therein contained do stand ratified and confirmed. And the court further finds that there is due to the complainant for interest accrued since the date of said report upon the bond thereto attached, and upon moneys mentioned therein paid for taxes and assessments, the sum of one hundred and eight dollars and five cents.

And this court being fully advised in the premises, doth find, adjudge, and decree that all the material allegations in said bill of complaint contained have been fully proved, and that there is at the date of entry of this decree, due to the complainant in this cause the sum of one hundred and ten thousand two hundred and

seventy-eight dollars and fifty cents, and that the complainant has a valid and first lien therefor upon the lands and premises hereinafter described, and that the rights and interests of the defendants in this cause in said lands are subject and inferior to the lien of said complainant.

130 It is therefore, upon motion of counsel for the complainant, ordered, adjudged, and decreed, and this court, by virtue of the power and authority in it vested, doth order, adjudge, and decree that some of the defendants in this cause pay, or cause to be paid, to the complainant, within five days from the date of the entry of this decree, the said sum of one hundred and ten thousand two and seventy-eight dollars and fifty cents, with interest thereon at the rate of six per centum per annum from the date of the entry of this decree to the day of such payment, and, in default of so doing, that all and singular the said premises mentioned and described in the said bill of complaint, and hereinafter described, or so much thereof as may be sufficient to satisfy the amount due to the complainant, as hereinbefore adjudged, together with interest and the costs in this case, and which may be sold separately without material injury to the parties interested, be sold at public auction to the highest bidder, for cash, by Henry W. Bishop, Esq., master in chancery of this court; and it is further ordered that he make such sale at the front door of the building wherein this court is held, now called the National Life Building, and known as numbers one hundred and fifty-seven to one hundred and sixty-three, La Salle street, in the city of Chicago, in Cook county, Illinois, and that he give public notice of the time and place of holding such sale by

131 publishing an advertisement thereof once a week for three successive weeks, in a newspaper published in the city of Chicago, in the county of Cook and State of Illinois, the first publication of such notice being not less than twenty days previous to the time of such sale; that at such sale the complainant, or any of the parties to this cause, may be the purchaser or purchasers; that the said master shall give to any purchaser at such sale a certificate of sale, in pursuance of the laws of the State of Illinois concerning the sale of real estate by virtue of a decree of foreclosure of mortgage, and shall cause a duplicate of such certificate to be recorded as required by law.

The premises authorized to be sold under and by virtue of this decree are the following, to wit: All that certain lot, piece or parcel of land, situate, lying, and being in the county of Cook, and State of Illinois, known and described as being the north half of the northwest quarter of section nine (9), in township thirty-eight (38), north of range fourteen (14), east of the third principal meridian, containing eighty (80) acres, more or less. Together with all and singular the tenements, hereditaments,

and appurtenances thereunto belonging. It is further ordered that if the said premises, or any parcel thereof, shall at such sale be struck off and sold by the master to the complainant in this cause, the complainant shall be required to pay to the master only so much of the complainant's bid as shall, taken together with other moneys paid to the master at such sale on bids for parcels by other persons, if any there be, be sufficient to
132 satisfy the expenses of the sale, and the master's fees, disbursements and expenses, and the costs of this suit, and also any excess of the remainder of the amount of said bid, after such payment over the amount due the complainant under this decree for indebtedness secured by said mortgage. It is further ordered that said master make report to this court of such sale, and of his acts and doings hereunder for approval and confirmation, and for further direction herein, and that he retain from the moneys received by him on said sale the amount of his fees, disbursements, and commissions thereon, and bring the residue of such moneys, if any, into court to abide the further order of the court; and that he take the receipt of the clerk of this court therefor and file the same with said report; and if the price for which said premises shall be so sold shall be insufficient to satisfy the amount so found and adjudged to be due to the complainant with the interest thereon, and the costs of suit and expenses of sale, that the said master specify such deficiency in his said report of sale. And it is further ordered that the clerk of this court hold such moneys so to be paid him by said master, subject to the further order and direction of this court in this cause. It is further ordered that if any sale made by said master under this decree shall be confirmed by this court, and if the land so sold shall not be redeemed according to the laws of the State of Illinois, the master in chancery of this court shall, after the expiration of the time allowed by law for such redemption, execute and
133 deliver to the legal holder of any certificate of sale issued under this decree a deed of conveyance of the land in such certificate described, which shall not have been so redeemed. And it is further ordered, adjudged and decreed that the defendants in this cause, and all persons claiming by, through, or under them, or either of them, since the filing of the original bill of complaint in this cause, be forever barred and foreclosed from all equity of redemption and claim of, in, and to said above-described land and premises, and any part and parcel thereof which shall be sold as aforesaid under this decree, and which shall not be redeemed according to law. And it is further ordered, adjudged and decreed that upon the execution and delivery of the deed or deeds of conveyance as aforesaid, the grantee or grantees, his or their heirs or assigns, be let into possession of the

portion of said mortgaged premises so conveyed to him or them. And that any of the parties in this cause who may be in possession of said premises or any part thereof, any person who, since the commencement of this suit has come into possession under them, or either of them, on the production of said master's deeds of conveyance, and of a certified copy of the order of this court confirming the report of said sale, surrender possession thereof to such grantee or grantees, his or their heirs or assigns. And the court further finds from the evidence that after the execution and recording of the mortgage mentioned in the bill of complaint in this
134 cause, the said mortgaged land was by said William H. W. Cushman, without the consent of said complainant subdivided into eight hundred lots, and a number of streets and alleys, called the South Side Homestead Association Addition. And that by said William H. W. Cushman small parcels of said mortgaged land, called in said subdivision lots one, two, three, nine, ten, eleven, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, and seven hundred and eighty-four, were sold and conveyed to various persons. And the court further finds from the testimony taken in this cause, that said defendants Caroline F. Wilson and Louisa F. Wilson are subject to the lien of the indebtedness secured by the mortgage mentioned in the bill of complaint in this cause, the owners of a parcel of said mortgaged land, called lot number seven hundred and eighty-four, in the South Side Homestead Association Addition, being a part of the property described in the bill of complaint in this cause, and in the mortgage mentioned therein. And the court further finds from the evidence taken in this cause that the said defendant, John W. Waughop, is the owner, by assignment, of a certain judgment rendered in the superior court of Cook county on the seventh day of January, A. D. 1874, in favor of the Illinois Starch Company and against William H. W. Cushman and Isaac N. Hardin for the sum of two thousand and fifty-three dollars and twenty-one cents, and costs of suit, and that said judgment is subject and inferior to the lien of the indebtedness due the
135 original complainant in this cause, the Connecticut Mutual Life Insurance Company, a lien upon all the lots of said subdivision excepting lots one, two, three, nine, ten, eleven, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, and seven hundred and eighty-four.

And the court further finds from the evidence in this cause that after the execution and delivery of the mortgage mentioned in the bill of complaint in this cause, there were sold and conveyed by the owner of the equity of redemption of said land certain parcels of said mortgaged land as follows: On the second

day of December, A. D. 1872, there were sold lots numbered three hundred and ninety-five, three hundred ninety-six, three hundred and ninety-seven, and three hundred and ninety-eight; on the twentieth day of May, A. D. 1873, lot numbered seven hundred and eighty-four; on the first day of September, A. D. 1873, lots numbered one, two, and three, and on the first day of December, 1873, lots numbered nine, ten, and eleven; and the court thereupon orders, adjudges, and decrees that in making sale under this decree the master shall first offer for sale all of the lots in said subdivision excepting said lots numbered one, two, three, nine, ten, eleven, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, and seven hundred and eighty-four; and that if it shall be necessary so to do to realize the amount due under this decree he shall next offer for sale said lots
136 numbered nine, ten, and eleven; and that if it shall be necessary so to do to realize the amount due under this decree he shall next offer for sale said lots numbered one, two, and three; and that if it shall be necessary so to do to realize the amount due under this decree he shall next offer for sale said lot numbered seven hundred and eighty-four; and that if it shall be necessary so to do to realize the amount due under this decree he shall next offer for sale said lots numbered three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, and three hundred and ninety-eight; and that if it shall be necessary so to do to realize the amount due under this decree he shall next and lastly offer for sale the streets and alleys of said subdivision.

Afterwards, to wit, on the twenty-third day of August, A. D. 1879, came Henry W. Bishop, a master in chancery of said court, and filed in said clerk's office his report of sale under the decree entered therein on the fourteenth day of July, A. D. 1879, which said report of sale is in the words and figures following, to wit:

Master's Report of sale.

In the Circuit Court of the United States for the Northern Diis- trict of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
ANNA C. CUSHMAN, THE SOUTH-SIDE Homestead Association, of the city of Chicago,
137 a corporation, etc., James Murphy, Catherine Murphy, his wife; William D. Kerfoot, William A. Merrigold, Jacob Loewe, Mary Loewe, his wife, John Schieberl, Hel-

ena Schieberl, his wife, Peter H. Hoeuk, Mary Hoeuk, his wife, Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann, Fredericka Weickmann, his wife, Henry W. Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, Illinois Starch Company, a corporation, etc., John R. Adams, Levi Rosenfeld, Jacob Rosenberg, The Newark Savings Institution of Newark, New Jersey, a corporation, etc., Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, The National Bank of Illinois, a corporation, etc., William M. Derby, John E. Owsley, Jesse Spalding, receiver, The Commercial National Bank of Chicago, a corporation, etc., The National City Bank of Ottawa, Illinois, a corporation, etc., Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, John W. Waughop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham, Ferdinand Wengi, Henry Cregan, Caroline F. Wilson, executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Nathan H. Walworth, receiver of the City National Bank of Chicago, Lewis C. Ellsworth, receiver, Sherman Leland, administrator of the estate of William H. W. Cushman, deceased, defendants in chancery.

In Chancery. Gen. No. 15,249.

138

Master's report of sale.

To the Honorable the Judges of said Court.

The undersigned, Henry W. Bishop, as master in chancery of said court, respectfully reports, that in pursuance of a decree of the said court, entered in the above-entitled cause, on the fourteenth (14th) day of July, A. D. 1879, (one thousand eight hun-

dred and seventy-nine,) wherein it was among other things ordered, that in default of payment within five days from the date of the entry of said decree by said defendants, or some of them, to the said complainant, of the sum of one hundred and ten thousand two hundred and seventy-eight dollars and fifty cents, with interest thereon at the rate of six per centum per annum from the date of the entry of the said decree, to the day of such payment, and the costs in this cause taxed, all and singular the premises mentioned and described in the bill of complaint in this cause, or so much thereof as might be sufficient to satisfy the amount due to the complainant as therein before adjudged, together with the interest and the costs in this case, and which might be sold separately without material injury to the parties interested, be sold at public auction to the highest bidder, for cash, by Henry W. Bishop, the master in chancery of this court, at the front door of the building wherein this court is held, now called the National Life Building, and known as numbers 157 to 163 La
139 Salle street, in the city of Chicago, Cook county, Illinois, in the manner and upon the terms and notice in said decree mentioned, the said defendants having made default in payment of the moneys in said decree mentioned, within said period of five days, and the same remaining wholly unpaid, the undersigned, in accordance with said decree of the said court, as such master in chancery, advertised the said premises and property for sale at public auction to the highest bidder, for cash in hand, in the Chicago Daily Evening Journal, a newspaper of general circulation, printed and published in the city of Chicago, county of Cook, and State of Illinois, the date of the first paper containing the said advertisement being the twenty-first (21st) day of July, A. D. 1879, and the date of the last paper containing the same being the eleventh day of August, A. D. 1879, the said advertisement having been published in said newspaper for four successive weeks, to wit, four times prior to the day of sale named therein, and as appears by a certified copy of the said advertisement and the certificate of publication thereof hereto attached and made a part hereof.

That at the hour, day, and place fixed and mentioned in the said advertisement, to wit, at the hour of eleven (11) in the forenoon of the fifteenth (15th) day of August, A. D. 1879 (one thousand eight hundred and seventy-nine), at the front door of the building wherein said court is held, now called the National Life Building, and known as Nos. 157 to 163 La Salle street, in the city of Chicago, in Cook county, Illinois, the undersigned,
140 as such master in chancery, did offer the premises and property in the said advertisement and decree mentioned and described as all that certain lot, piece, or parcel of land situate, lying, and being in the county of Cook and State of Illi-

nois, known and described as being the north half of the northwest quarter of section nine (9), in township thirty-eight (38), north of range fourteen (14), east of the third principal meridian, containing eighty (80) acres, more or less, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, for sale at public auction to the highest and best bidder, for cash in hand, and as follows, to wit: the undersigned first offered for sale, as directed in the said decree, all of the lots in a subdivision which had been made of the said premises referred to and described in the said decree as called the South-Side Homestead Association Addition (excepting lots numbered one, two, three, nine, ten, eleven, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, and seven hundred and eighty-four, in said subdivision), in lots separately, and then and there struck off and sold the same separately, in the order and for the various amounts mentioned and set forth in the schedule hereunto annexed and marked "A," the whole of said lots having been sold to the said complainant, The Connecticut Mutual Life Insurance Company, for the total sum of one hundred and ten thousand two hundred and eighty-eight dollars, the said respective bids being the highest and best bids offered for
141 said lots, and said complainant being the highest and best bidder therefor.

141 SCHEDULE "A."

Lots.	Sold For.	Lots.	Sold For.	Lots.	Sold For.
4	$250	37	$186	67	$200
5	250	38	186	68	200
6	250	39	186	69	200
7	250	40	186	70	200
8	250	41	186	71	200
12	225	42	186	72	200
13	225	43	186	73	200
14	225	44	186	74	200
15	225	45	186	75	150
16	225	46	186	76	150
17	225	47	186	77	150
18	225	48	186	78	150
19	225	49	194	79	150
20	225	50	200	80	150
21	225	51	200	81	150
22	225	52	200	82	150
23	225	53	200	83	150
24	225	54	200	84	150
25	225	55	200	85	150

Lots.	Sold For.	Lots.	Sold For.	Lots.	Sold For.
26	225	56	200	86	150
27	225	57	200	87	150
28	225	58	200	88	150
29	225	59	200	89	150
30	225	60	200	90	150
31	194	61	200	91	150
32	186	62	200	92	150
33	186	63	200	93	150
34	186	64	200	94	150
35	186	65	200	95	150
36	186	66	200	96	150
142					
97	$150	130	$138	163	$200
98	150	131	138	164	200
99	150	132	138	165	200
100	175	133	138	166	200
101	175	134	138	167	200
102	175	135	138	168	200
103	175	136	138	169	200
104	175	137	138	170	200
105	175	138	138	171	200
106	175	139	138	172	200
107	175	140	138	173	200
108	175	141	148	174	200
109	175	142	138	175	150
110	175	143	138	176	150
111	175	144	138	177	150
112	175	145	138	178	150
113	175	146	138	179	150
114	175	147	138	180	150
115	175	148	138	181	150
116	175	149	138	182	150
117	175	150	200	183	150
118	175	151	200	184	150
119	175	152	200	185	150
120	175	153	200	186	150
121	175	154	200	187	150
122	175	155	200	188	150
123	175	156	200	189	150
124	175	157	200	190	150
125	138	158	200	191	150
126	138	159	200	192	150
127	138	160	200	193	150
128	138	161	200	194	150
129	138	162	200	195	150

Lots.	Sold For.	Lots.	Sold For.	Lots.	Sold For.
143					
196	$150	229	$138	262	$119
197	150	230	138	263	119
198	150	231	138	264	119
199	150	232	138	265	119
200	150	233	138	266	119
201	150	234	138	267	119
202	150	235	138	268	119
203	150	236	138	269	119
204	150	237	138	270	119
205	150	238	138	271	118
206	150	239	138	272	119
207	150	240	138	273	119
208	150	241	138	274	119
209	150	242	138	275	107
210	150	243	138	276	107
211	150	244	138	277	107
212	150	245	138	278	107
213	150	246	138	279	107
214	150	247	138	280	107
215	150	248	138	281	107
216	150	249	138	282	107
217	150	250	119	283	107
218	150	251	119	284	107
219	150	252	119	285	107
220	150	253	119	286	107
221	150	254	119	287	107
222	150	255	119	288	107
223	150	256	119	289	107
224	150	257	119	290	107
225	138	258	119	291	107
226	138	259	119	292	107
227	138	260	119	293	107
228	138	261	119	294	107
144					
295	$107	328	$120	361	$186
296	107	329	120	362	186
297	107	330	120	363	186
298	107	331	120	364	186
299	107	332	120	365	186
300	132	333	120	366	186
301	132	334	120	367	186
302	132	335	120	368	194
303	132	336	120	369	175
304	132	337	120	370	175
305	132	338	120	371	175

Lots.	Sold For.	Lots.	Sold For.	Lots.	Sold For.
306	132	339	120	372	175
307	132	340	120	373	175
308	132	341	120	374	175
309	132	342	120	375	175
310	132	343	120	376	175
311	132	344	120	377	175
312	132	345	120	378	175
313	132	346	120	379	175
314	132	347	120	380	175
315	132	348	120	381	175
316	132	349	120	382	175
317	132	350	194	383	175
318	132	351	186	384	174
319	132	352	186	385	175
320	132	353	186	386	175
321	132	354	186	387	175
322	132	355	186	388	225
323	132	356	186	389	225
324	132	357	186	390	225
325	120	358	186	391	225
326	120	359	186	392	225
327	120	360	186	393	225
145					
394	$225	431	$150	464	$119
399	200	432	150	465	119
400	200	433	150	466	119
401	200	434	150	467	119
402	200	435	150	468	119
403	200	436	150	469	119
404	200	437	150	470	119
405	200	438	150	471	119
406	200	439	150	472	119
407	200	440	150	473	107
408	200	441	150	474	107
409	200	442	150	475	107
410	175	443	150	476	107
411	175	444	150	477	107
412	175	445	150	478	107
413	175	446	150	479	107
414	175	447	150	480	107
415	175	448	119	481	107
416	175	449	119	482	107
417	175	450	119	483	107
418	175	451	119	484	107
419	175	452	119	485	107

Lots.	Sold For.	Lots.	Sold For.	Lots.	Sold For.
420	175	453	119	486	107
421	175	454	119	487	107
422	175	455	119	488	107
423	175	456	119	489	107
424	175	457	119	490	107
425	175	458	119	491	107
426	175	459	119	492	107
427	175	460	119	493	107
428	175	461	119	494	107
429	150	462	119	495	107
430	150	463	119	496	107
146					
497	$107	530	$95	563	$138
498	107	531	95	564	138
499	107	532	95	565	138
500	107	533	95	566	138
501	107	534	96	576	138
502	107	535	95	568	138
503	107	536	95	569	138
504	107	537	95	570	138
505	107	538	95	571	138
506	107	539	95	572	138
507	107	540	95	573	125
508	107	541	95	574	125
509	107	542	95	575	125
510	107	543	95	576	125
511	107	544	95	577	125
512	107	545	95	578	125
513	107	546	95	579	125
514	107	547	95	580	125
515	107	548	138	581	125
516	107	549	138	582	125
517	107	550	138	583	135
518	107	551	138	584	125
519	107	552	138	585	125
520	107	553	138	586	125
521	107	554	138	587	125
522	107	555	138	588	125
523	95	556	138	589	125
524	95	557	138	590	125
525	95	558	138	591	125
526	95	559	138	592	125
527	95	560	138	593	125
528	95	561	138	594	125
529	95	562	138	595	125

	Lots.	Sold For.	Lots.	Sold For.	Lots.	Sold For.
147						
	596	$125	629	$112	662	$95
	597	125	630	112	663	95
	598	125	631	112	664	95
	599	125	632	112	665	95
	600	125	633	112	666	95
	601	125	634	112	667	95
	602	125	635	112	668	95
	603	125	636	112	669	95
	604	125	637	112	670	95
	605	125	638	112	671	95
	606	125	639	112	672	95
	607	125	640	112	673	82
	608	125	641	112	674	82
	609	125	642	112	674	82
	610	125	643	112	676	82
	611	125	644	112	677	82
	612	125	645	112	678	82
	613	125	646	112	679	82
	614	125	647	112	680	82
	615	125	648	95	681	82
	616	125	649	95	682	82
	617	125	650	95	683	82
	618	125	651	95	684	82
	619	125	652	95	685	82
	620	125	653	95	686	82
	621	125	654	95	687	82
	622	125	655	95	688	82
	623	112	656	95	689	82
	624	112	657	95	690	82
	625	112	658	95	691	82
	626	112	659	95	692	82
	627	112	660	95	693	82
	628	112	661	95	694	82
148						
	695	$82	728	$94	761	$150
	686	82	729	94	762	150
	697	82	730	94	763	150
	698	107	731	94	764	150
	699	107	732	94	765	150
	700	107	733	94	766	150
	701	107	734	94	767	140
	702	107	735	94	768	138
	703	107	736	94	769	138
	704	107	737	94	770	138
	705	107	738	94	771	138

Lots.	Sold For.	Lots.	Sold For.	Lots.	Sold For.
706	107	739	94	772	138
707	107	740	94	773	138
708	107	741	94	774	138
709	107	742	94	775	138
710	107	743	94	776	138
711	107	744	94	777	138
712	107	745	94	778	138
713	107	746	94	779	138
714	107	747	94	780	138
715	107	748	150	781	138
716	107	749	150	782	138
717	107	750	150	783	138
718	107	751	150	785	140
719	107	752	150	786	175
720	107	753	150	787	175
721	107	754	150	788	175
722	107	755	150	789	175
723	94	756	150	790	175
724	94	757	150	791	175
725	94	758	150	792	175
726	94	759	150	793	75
727	94	760	150	794	75
				795	75
				796	75
				797	100
				798	100
				799	100
				800	100

149 The undersigned then offered for sale, as directed in the said decree, the said lots in said sub-division numbered respectively nine, ten, and eleven, in lots separately, and then and there struck off and sold each of said lots separately for the sum of two hundred and fifty dollars ($250) for each lot—(the total amount realized on the sale of said three last mentioned lots being seven hundred and fifty dollars ($750) to the said complainant The Connecticut Mutual Life Insurance Company, the said respective bids being the highest and best bids offered for said lots, and said complainant being the highest and best bidder therefor.

The undersigned then offered for sale, as directed in the said decree the said lots in said sub-division numbered respectively one, two, and three in lots separately, and then and there struck off and sold each of the said lots separately for the sum of two hundred and fifty dollars for lot—(the total amount realized on the sale of said three last mentioned lots being seven hundred and fifty dollars)

($750) to Joseph P. Butterfield, the said respective bids being the highest and best bids offered for said lots, and said Joseph P. Butterfield being the highest and best bidder therefor.

The undersigned then offered for sale, as directed in the said decree, the said lot in said sub-division numbered seven hundred and eighty four, and then and there struck off and sold the same for the sum of one hundred and thirty-eight dollars ($138) to the said complainant The Connecticut Mutual Life Insurance
150 Company, that sum being the highest and best sum bid for the same, and it being the highest and best bidder therefor.

The undersigned then offered for sale as directed in said decree, the said lots it said sub-division numbered respectively three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, and three hundred and ninety-eight, in lots separately, and then and there struck off and sold each of the said lots separately for the sum of two hundred and twenty-five dollars ($225) for each of the said lots (the total amount bid on the sale of the said four last mentioned lots being nine hundred, to the said complainant The Connecticut Mutual Life Insurance Company, the said respective bids being the highest and best bids made for said lots, and said complainant being the highest and best bidder therefor.

And as provided for in said decree, said complainant by its solicitors has paid over to the undersigned as such master in chancery the sum of ——, being with the sum realized on said sales to John P. Butterfield, the sum required to satisfy the taxed costs herein (amounting to two hundred and eighty-eight dollars and sixty-eight cents) ($288.68) and the master's fees, commissions and disbursements on said sale.

And the undersigned further reports that he has executed and delivered to said respective purchasers certificates of sale as directed in said decree, and has filed in the office of the recorder of deeds for Cook county, Illinois, duplicates of such certificates, paying the fees therefor.

151 A particular statement of the said sale is hereto annexed, made a part hereof, and marked Exhibit "B."

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated: Chicago, August 23d A. D. 1879.

Exhibit B.

14th July, 1879, decree for payment of	$110,278.50
15th August, 1879, interest thereon at 6 per cent. from entry of the decree	569.77
Taxed costs	288.68
	$111,136.95
Master's commissions on sale	1,692.39
Certificates of sale	1.50
Paid recording duplicates	12.20
" advertising sale	13.32
Report of sale	5.00
	$112,861.36
Amount of said sales	112,826.00
Deficiency	$35.36

Received of H. W. Bishop, master in chancery of said court, the sum of two hundred and eighty-eight dollars and sixty-eight cents, being the amount of the taxed costs herein.

WM. H. BRADLEY, *Clerk.*

152 Settled with H. W. Bishop, master in chancery, in accordance with the above statement.

ISHAM & LINCOLN,
Complainant's Solicitors.

Certificate of publication of notice of master's sale.

Master's Sale.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States, for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
ANNA C. CUSHMAN, the South Side Homestead Association of the city of Chicago, a corporation, etc., James Murphy, Catherine Murphy, his wife, William D. Kerfoot, William A. Merigold, Jacob Loewe, Mary Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter H. Hoeuk, Mary Hoeuk, his wife, Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann,

Fredericka Wieckmann, his wife, Henry W. Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, Illinois Starch Company, a corporation, etc., John R. Adams, Levi Rosenfeld, Jacob Rosenberg, the Newark Savings Institution, of Newark, New Jersey, a corporation, etc., Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, the National Bank of Illinois, a corporation, etc., William M. Derby, John E. Owsley, Jesse Spalding, receiver, the Commercial National Bank of
153 Chicago, a corporation, etc., the National City Bank of Ottawa, Illinois, a corporation, etc., Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLean, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, John W. Waughop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham, Ferdinand Wengi, Henry Cregan, Caroline F. Wilson, executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Nathan H. Walworth, receiver of the City National Bank of Chicago, Lewis C. Ellsworth, receiver, Sherman Leland, administrator of the estate of William H. W. Cushman, deceased, defendants.

} In Chancery, General No. 15249.

In pursuance of a decree of the said court entered in the above-entitled cause, on the fourteenth day of July, A. D. 1879, I, Henry W. Bishop, master in chancery of the said court, will sell at public auction to the highest and best bidder, for cash in hand, at the front door of the building wherein said court is held, now called the National Life Building, and known as Nos. 157 to 163 La Salle street, in the city of Chicago, in Cook county, Illinois, on Friday, the fifteenth day of August, A. D. 1879, at eleven o'clock in the forenoon of
154 said last-mentioned day, the premises and property in the said decree mentioned, and described as follows, to wit:

All that certain lot, piece, or parcel of land situate, lying, and being in the county of Cook and State of Illinois, known and described as being the north half of the northwest quarter of section nine (9), in township thirty-eight (38), north of range fourteen (14), east of the third principal meridian, containing eighty (80) acres, more or less, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging.

Dated Chicago, Illinois, July twenty-first, 1879.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

ISHAM & LINCOLN,
Complainant's Solicitors.

This is to certify that the annexed notice of master's sale was published in the Chicago Daily Evening Journal, a newspaper of general circulation, printed and published in the city of Chicago, county of Cook, and State of Illinois, four times—being one time a week for four successive weeks—the date of the first paper containing the same being the 21st day of July, 1879, having been published and issued on that day, and the date of the last paper containing the same being the 11th day of August, 1879, being published and issued on that day, and that I have received $13.32 for publishing the same.

Dated at Chicago, Aug. 11th, 1879.

HENRY W. FARRAR, *Publisher.*

Endorsed: Filed Aug. 23, 1879. W. H. Bradley, cl'k.

155 Afterwards, to wit, on the tenth day of October, A. D. 1879, in the October adjourned term A. D. 1879 of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Decree Confirming Sale.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
ANNA C. CUSHMAN, The South Side Homestead Association of the city of Chicago, a corporation, etc., James Murphy, Catherine Murphy, his wife, William D. Kerfoot, William A. Merigold, Jacob Loewe, Mary Loewe his wife, John Schieberl, Helena Schieberl his wife, Peter H. Hoeuk, Mary Houk his wife, Aaron Gibbs, Louis D. Hoard, Hermann Wieckmann, Fredericka Wieckmann his wife, Henry W.

Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin his wife, William N. Cushman, Adeline D. Cushman hiswife, Illinois Starch Company, a corporation, etc., John R. Adams, Levi Rosenfeld, Jacob Rosenberg, The Newark Savings Institution of Newark, New Jersey, a corporation, etc., Salome Hatheway, Elnathan P. Hatheway, Edgar Loomis, Martin P. Follett, The National Bank of Illinois, a corporation, etc., William M. Derby, John E. Owsley, Jesse Spalding, receiver, The Commercial National Bank of Chicago, a corporation, etc., The National City Bank of Ottawa, Illinois, a corporation, etc., Washington Libby, John M. Birdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernard Nold, John W. Waughop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham, Ferdinand Wengi, Henry Cregan, Caroline F. Wilson, executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Nathan H. Walworth, receiver of the City National Bank of Chicago, Lewis C. Ellsworth, receiver, Sherman Leland, administrator of the estate of William H. W. Cushman, deceased. } In Chancery.

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And now again comes the complainant by its solicitors, Messrs. Isham & Lincoln, and upon their motion, no cause to the contrary having been shown, it is ordered that the report of Henry W. Bishop, Esq., master in chancery of this court, of the sale and the sale of the premises described in the decree entered in this cause on the fourteenth day of July, A. D. 1879, and the delivery of the certificates of sale to the purchasers at such sale, and which said report was filed herein on the twenty-third day of August, A. D. 1879, be and the same are hereby approved, ratified and absolutely confirmed. And it is further ordered, adjudged and decreed that the defendants in this cause

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and all persons claiming by, through or under them or

either of them since the filing of the original bill of complaint in this cause be forever barred and foreclosed from all equity of redemption and claim of, in and to said land and premises so sold as aforesaid and every part and parcel thereof which shall not be redeemed according to law.

And it appearing to the court from said report that the said master has, as required by said decree, paid into the court and taken the receipt of William H. Bradley, Esq., clerk, therefor, and filed the same with his report, the sum of two hundred and eighty-eight dollars and sixty-eight cents, being the amount of the taxed costs in said cause, and that after deducting the same, together with the master's fees, commissions, and disbursements, there remains to be applied upon the amount due to said complainant under said decree the sum of one hundred and ten thousand eight hundred and twelve dollars and ninety-one cents. It is ordered that said clerk credit said last-mentioned sum on said decree as paid to said complainant on said fifteenth day of August, A. D. 1879. And it further appearing to the court from said report that the proceeds of said sale were insufficient to pay the amount found and adjudged to be due the complainant herein, and that the deficiency thereof amounts to the sum of thirty-five dollars and thirty-six cents.

And it further appearing to the court that William H. W. Cushman, now deceased, was at the date of his death
158 personally liable for the payment of the said debt, it is ordered, adjudged and decreed that said defendant, Sherman Leland, administrator of the estate of said William H. W. Cushman, deceased, pay to the complainant, in due course of administration, said last-mentioned sum of thirty-five dollars and thirty-six cents, with interest at the rate of six per centnm per annum from said fifteenth day August, A. D. 1879.

159 Afterwards, to wit, on the eighteenth day of August, A. D. 1880, there was filed in said clerk's office the certificate of the clerk of issuance of certificate of redemption to Andrew Crawford, which said certificate is in the words and figures following, to wit:

Certificate of Clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify that Andrew Crawford, assignee of Washington Libbey, a judgment creditor of William H. W. Cushman, deceased, has this day paid to me the sum of $8,320.10, to redeem lots 161 to 166, 185 to 189, 212 to 216, 238 to 243, 552 to 557, 573 to 579, 648 to 662, and 683 to 693, all inclusive, in the South Side Homestead Associa-

tion Addition, Sec. 9, T. 38 N., R. 14 E. of 3d P. M., from a sale of said premises made on the 15th day of August, A. D. 1879, by Henry W. Bishop, master in chancery of said court, under a decree entered in said court on the 14th day of July, A. D. 1879, in the cause in which The Connecticut Mutual Life Insurance Company is complainant and Anna C. Cushman *et al.* are defendants, and that I have this day issued a certificate of redemption of said premises to said Andrew Crawford, assignee as aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this eighteenth day of August, A. D. 1880.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Aug. 18, 1880. Wm. H. Bradley, clerk.

160 On the same day, to wit, on the eighteenth day of August, A. D. 1880, there was filed in said clerk's office the protest of A. Crawford as to the payment of ten per cent. interest per annum, on amount of redemption, which said protest is in the words and figures following, to wit:

Protest of A. Crawford.

To WILLIAM H. BRADLEY, Esq., *Clerk of U. S. Circuit Court.*

DEAR SIR: In making redemption, this 18th day of August, 1880, from sale by master in chancery of the U. S. circuit court for the northern district of Illinois, of certain lots sold under decree of foreclosure August 15th, 1879, in a suit lately pending in said court wherein the Connecticut Mutual Life Insurance Company was complainant, and Anna C. Cushman *et al* were defendants, I was required to pay to you interest at the rate of ten per cent. per annum on the amount of the bids at the said master's sale. I deny that I was bound to pay more than eight per cent. interest, and as to the other two per cent., I hereby notify you that I pay the same under protest. Yours, truly,

A. CRAWFORD.

Endorsed: Filed Aug. 18, 1880. Wm. H. Bradley, clerk.

161 Afterwards, to wit, on the tenth day of November, A. D. 1880, there was filed in said clerk's office, the clerk's certificate of issuance of certificate of redemption to Henry S. Monroe, which said certificate is in the words and figures following, to wit:

Certificate of Clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify that Henry S. Monroe, judgment creditor of William H. Cushman, defendant, has this day paid to me the sum of $12,614.80 to re-

deem lots 167 to 174, 192 to 210, 225 to 235, 562 to 572, 587 to 608, and 623 to 633, all inclusive, in the South Side Homestead Association Addition, Sec. 9 T. 38 N., R. 14 E. of 3d P. M., from a sale of said premises, made on the 15th day of August, A. D. 1879, by Henry W. Bishop, master in chancery of said court, under a decree entered in said court on the fourteenth day of July, A. D. 1879, in the cause in which the Connecticut Mutual Life Insurance Company is complainant, and Anna C. Cushman *et al.* are defendants, and that I have this day issued a certificate of redemption of said premises to said Monroe, judgment creditor as aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this tenth day of November, A. D. 1880.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Nov. 10, 1880. Wm. H. Bradley, clerk.

162 Afterwards, to wit, on the fifteenth day of November, A. D. 1880, there was filed in said clerk's office the clerk's certificate of issuance of certificate of redemption to Robert D. Fowler, which said certificate is in the words and figures following, to wit:

Certificate of Clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify that Robert D. Fowler, assignee of Henry S. Monroe, judgment creditor of William H. Cushman, defendant, has this day paid to me the sum of $61,421.80 to redeem lots 15 to 29, 31 to 99, 300 to 387, 392 to 394, 399 to 497, 698 to 783, and 785 to 800, all inclusive, in the South Side Homestead Association Addition, Sec. 9, T. 38 N., R. 14 E., of 3d P. M., from a sale of said premises made on the 15th day of August, A. D. 1879, by Henry W. Bishop, master in chancery of said court, under a decree entered in said court on the 14th day of July, A. D. 1879, in the cause in which the Connecticut Mutual Life Insurance Company is complainant, and Anna C. Cushman *et al.* are defendants, and that I have this day issued a certificate of redemption of said premises to said Robert D. Fowler, assignee as aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this fifteenth day of November, A. D. 1880.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Nov. 15, 1880. Wm. H. Bradley, clerk.

163 Afterwards, to wit, on the twenty-fourth day of November, A. D. 1880, in the adjourned October term, A. D. 1880, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN *et al.* } In Chancery.

On this day comes said complainant, by Isham & Lincoln, its solicitors, and also comes Henry W. Bishop, a master in chancery of this court, and presents to the court the deed of said master conveying to James C. Murphy, assignee of the purchaser, part of the premises in the bill of complaint mentioned, in accordance with the sale in this cause heretofore reported by said master, which deed bears date the twenty-third day of November, A. D. 1880; and it appearing to the court that no redemption has been made from said sale, and that James C. Murphy is entitled to said deed, it is therefore, on motion of said complainant's solicitors, ordered by the court that said master's deed be approved and confirmed, and the said master is directed to deliver the same to said James C. Murphy.

164 Afterwards, to wit, on the tenth day of December, A. D. 1880, in the adjourned October term, A. D. 1880, of said court, in the record of the proceedings thereof, in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN *et al.* } In Chancery.

And on motion of Isham and Lincoln, complainant's solicitors, it is ordered that the marshal withhold the delivery of any deed made in pursuance of his sale on December eighth, A. D. 1880, under a certain execution issued in the case of Henry S. Monroe *vs.* William H. Cushman, out of the circuit court of the United States for the northern district of Illinois, on the ninth day of November, A. D. 1880, and levied upon certain property in the South Side Homestead Association Addition, being a subdivision of north half of north-west quarter of section nine, in township thirty-eight north, range fourteen east, of third principal meridian, in Cook county, Illinois, said premises having been sold

under a decree entered on July fourteenth, A. D. 1879, in the above entitled cause, and it being claimed that a redemption has been made from the sale under said last mentioned decree under said judgment, in favor of said Monroe, until further order herein of the court.

165 Afterwards, to wit, on the fourteenth day of December, A. D. 1880, in the adjourned October term, A. D. 1880, of said Court, in the record of the proceedings thereof, in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN *et al.* } In Chancery.

Now comes the complainant by E. S. Isham, Esq., its solicitor, and Robert D. Fowler, a redeeming creditor of a portion of the property sold under the decree heretofore entered herein, and the purchaser of the same at the marshal's sale of said property under an execution issued out of the law side of this court in the case of Henry S. Monroe against William H. Cushman, by William R. Page, Esq., his solicitor, and the said Robert D. Fowler, Esq., by his solicitor, moves the court to set aside and vacate the order entered herein on the tenth day of December, instant, directing the marshal to withhold the delivery of a deed to said Fowler, and after hearing the argument of counsel, the court sustains said motion, and orders that the order of the tenth day of December, instant, be set aside and vacated.

166 Afterwards, to wit, on the sixteenth day of December, A. D. 1880, there was filed in said clerk's office the motion of complainant's solicitors for leave to file petition, which said motion is in the words and figures following, to wit:

Motion of Complainant's Solicitors.

UNITED STATES OF AMERICA, *Northern District of Illinois.* } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN *et al.* } In Chancery. Gen. No. 15249.

And now comes The Connecticut Mutual Life Insurance Company, complainant in the original bill in the above entitled cause,

by Isham and Lincoln, its solicitors, and prays leave of court to file in said cause the annexed petition.

ISHAM & LINCOLN,
Sol'rs for said Complainant.

Endorsed: Filed Dec. 16th, 1880. W. H. Bradley, clerk.

167 On the same day, to wit, the sixteenth day of December, A. D. 1880, came said complainant and presented to the court under said motion for leave to file the same, its petition referred to in said motion as annexed thereto, and was so annexed, and which is in the words and figures following, to wit:

168 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN and others.	In Chancery, Gen. No. 15,249.

To the Judges of the said circuit court of the United States, in chancery sitting:

The petition of the Connecticut Mutual Life Insurance Company, complainant in the original bill in the above-entitled cause.

Your orator, filing this its petition, by leave of court, represents to your honors, that on the twelfth day of December, A. D. 1877, it filed in this court, and in the above-entitled cause a bill for the foreclosure of the mortgage therein set forth, executed to your orator by William H. W. Cushman and Anna C. Cushman, his wife, mortgaging to your orator the premises therein, and in said bill described, to wit:

All that certain lot, piece or parcel of land situate, lying
169 and being in the county of Cook, and State of Illinois, known and described as being the north half of the northwest quarter of section nine, (9,) in township thirty-eight (38) north, of range fourteen (14) east of the third principal meridian, containing eighty (80) acres, more or less, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging.

That said mortgage was executed and delivered to your orator on or about the twenty-ninth day of January, A. D. 1870, and was given to secure an indebtedness of said William H. W. Cushman to your orator, in the sum of seventy-five thousand dollars, money loaned to said Cushman.

2. That at the time of filing said bill of foreclosure, the said Wil-

liam H. W. Cushman was indebted to your orator in the further sum of seventy-five thousand dollars, money loaned to him, together with a large amount of accumulated interest thereon, amounting in the aggregate to over ninety thousand dollars, which was secured to be paid by a certain mortgage upon the following described premises, to wit:

170 All these certain lots, pieces or parcels of land situate lying and being in the town of Hyde Park, in the county of Cook and State of Illinois, known and described as being lots numbered one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) all in block number one, (1;) and lots number one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) all in block number two, (2;) and lots number one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) all in block number three, (3;) all of said lots and blocks being in Hardin's subdivision of the east half of the south half of the north half of the south half of the northwest quarter of section ten, (10,) in township thirty-eight, (38,) north of range fourteen, (14,) east of the third principal meridian, as the same are shown on a map or plat of said subdivision duly recorded in the recorder's office of said Cook county, in book 173 of maps, at page 55. Said premises are situate north of and fronting on Fiftieth street, and extend continuously from Indiana avenue east to South Park

171 Boulevard, except that portion intersected by Prairie and Calumet avenues, and have an uniform width from north to south of two hundred and ninety-eight and thirty-five ($298\frac{35}{100}$) hundredths feet, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging.

That upon said mortgage a bill of foreclosure was filed in this court on the twenty-seventh day of December, A. D. 1877, and that thereafter such proceedings were had that a decree of sale was made and the premises were sold by the master in chancery of this court; and that after said sale a judgment for deficiency was entered on the eleventh day of October, A. D. 1880, in favor of your orator for the sum of nine thousand five hundred and forty-nine dollars and twenty-nine cents, being a part of the indebtedness secured by said mortgage, which still remains due and wholly unpaid.

3. That at the time of filing the bill of foreclosure first above mentioned the said William H. W. Cushman was also indebted to your orator in the sum of thirty-five thousand dollars for money loaned to him, which was secured to be paid by mortgage on the following described premises, to wit: All those certain

172 lots, pieces or parcels of land situate, lying and being in

the city of Chicago, in the county of Cook and State of Illinois, known and described as being a strip of land ten (10) feet and one and one-half inches in width, from front to rear, from off the south side of lot number eleven, (11,) and all of lots number fourteen, (14,) fifteen, (15,) and eighteen, (18,) all in block number one, (1,) in George Smith's addition to Chicago, being a subdivision of blocks number seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) and twenty-two (22) of the assessor's subdivision of the southwest fractional quarter of section twenty-two, (22,) township thirty-nine, (39,) north of range fourteen, (14,) east of the third principal meridian, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging.

That on the thirteenth day of March, A. D. 1878, your orator filed in this court a bill of foreclosure of said last mentioned mortgage; that at the time of filing the same the indebtedness secured thereby, together with its accumulations of interest, amounted to more than the sum of fifty thousand dollars.

173 That under said bill of foreclosure such proceedings were had that a decree for the sale of said mortgaged premises was made, and the same were sold by the master in chancery of this court, but not for enough to pay the said mortgage indebtedness; and that thereafter, on the eleventh day of October, A. D. 1880, a judgment for deficiency was entered in favor of your orator for the sum of seven thousand nine hundred and twelve dollars and twenty-five cents, being a part of the indebtedness secured by said mortgage, which still remains due and wholly unpaid.

4. That, in each of said cases of sale by said master, your orator caused appraisals of the actual value of said mortgaged premises to be made by judicious and discreet persons, and bid at such sales more than the fair amount of the value of such premises so ascertained, having bid in one case about thirty-five thousand dollars more than the appraisal, and in the other case about six thousand dollars more than the amount of the appraisal, and became the purchaser thereof; and your orator believes, and therefore avers, that the amounts bid at said sales respectively

174 were so great that there is no probability that said premises will be redeemed.

5. That the aggregate of said deficiency judgments so due to your orator, and still remaining unpaid, is more than seventeen thousand four hundred and sixty-one dollars, and the interest thereon; that the proceedings in which said deficiency judgments were entered appear of record in this court in the case bearing general number 15278, entitled The Connecticut Mutual Life Insurance Company against Isaac N. Hardin and others, in which said judgment for nine thousand five hundred and forty-nine dollars and twenty-nine cents was entered; and in the case

bearing general number 15458, entitled The Connecticut Mutual Life Insurance Company against Illinois Starch Company and others, in which said judgment for seven thousand nine hundred and twelve dollars and twenty-five cents was entered, to the records in which causes your orator refers, if there should be occasion therefor.

6. That subsequent to the execution of said first above-mentioned mortgage, for the foreclosure of which the bill in this cause was filed, the said mortgaged premises first above described
175 were conveyed by said William H. W. Cushman, together with other property, to his son, William H. Cushman.

7. That it appears by record in this cause that after the making of said mortgage said mortaged premises were subdivided into eight hundred lots, which said lots were numbered consecutively from one (1) to eight hundred, (800,) inclusive, which streets and alleys and a plat of said subdivision was filed of record according to law, said subdivision being known as "The South Side Homestead Association Addition to Chicago."

8. That under said bill of foreclosure filed in this cause such proceedings were had that a decree of sale of said mortgaged premises was entered on the fourteenth day of July, A. D. 1879, and that a sale thereof was made by the master in chancery of this court on the fifteenth day of August, A. D. 1879, and that at such sale your orator became the purchaser of all of said mortgaged premises, namely, of all of said eight hundred lots, excepting lots number one, two, and three of said subdivision, and that your orator bid therefor the whole amount of its mortgage indebtedness as adjudged in and by said decree, together with the costs and expenses of said proceeding, excepting the sum of thirty-
176 five dollars and thirty-six cents, which deficiency was left by inadvertence and not by design in distributing the amount of said indebtedness between seven hundred and ninety-seven lots.

9. That by the statutes of the State of Illinois in force at the time said mortgage was made, defendants in the said foreclosure cause last mentioned, including said William H. Cushman, were entitled, within twelve months from said master's sale, to redeem said premises from said sale by conforming to the provisions of said statute, but that said twelve months elapsed and no redemption was made or attempted to be made by said William H. Cushman, or by any other defendant.

10. That at the time of making said mortgage it was further provided by the statutes of Illinois then in force that after the expiration of twelve months, and at any time before the expiration of fifteen months from the sale of any lands or tenements under the provisions of said statute, it should be lawful for any judgment creditor to redeem the same in the manner provided in

said statute, and that that portion of said statute of said State of Illinois, providing for such redemption by any judgment
177 creditor, and in force at the time of making said mortgage to your orator, is sections fourteen and twenty-four of chapter fifty-seven, entitled Judgments and Executions, of the Revised Statutes of 1845 of the State of Illinois, and for further particularity concerning the right of redemption, as created by the law of the State of Illinois, your orator refers to said sections and to the other sections of said chapter fifty-seven of said Revised Statutes of 1845, which relate thereto.

11. That the time within which any redemption might be made of said premises or any part thereof by any judgment creditor, to wit, fifteen months from the date of said sale, expired on the fifteenth day of November, A. D. 1880, and your orator avers that no redemption of any of said premises was made within said period by any person, according to law.

12. That on the eleventh day of July, A. D. 1878, certain rules were entered in this court to govern the redemption of property from sales under decrees in chancery in this court; that a copy of said rules so entered, certified by the clerk and under the seal of this court, is attached as an exhibit hereto, marked "Exhibit A," and prayed to be taken as a part of this petition.

178 13. That on or about the third day of November, A. D. 1880, one Henry S. Munroe recovered and entered up a judgment in this United States circuit court, for the sum of $10,150, by confession under a warrant of attorney against said William H. Cushman; that execution was issued thereon and placed in the hands of the marshal of this court and a levy endorsed thereon on the ninth day of November, A. D. 1880, upon lots in said subdivision numbered from 167 to 174, both inclusive; 192 to 210, both inclusive; 225 to 235, both inclusive; 562 to 572, both inclusive; 587 to 608, both inclusive; 623 to 633, both inclusive; 1 to 99, both inclusive; 300 to 497, both inclusive, and 698 to 800, both inclusive; and thereupon, on the tenth day of November, A. D. 1880, said Henry S. Munroe deposited with the clerk of this court, assuming to act in conformity with the rules of this court above set forth, the sum of twelve thousand seven hundred and forty-one dollars and ninety-five cents, being, as shown by the entries on the books of said clerk, as follows:

Deposited for redemption of said lots numbered 167 to 174, inclusive; 225 to 235, inclusive; 192 to 210, inclusive; 562 to 572, inclusive; 587 to 608,	
179 inclusive, and 623 to 633, inclusive	$12,614 80
For clerk's fees, a percentage of one per cent.	126 15
For certificate of redemption	1 00
Making a total of	$12,741 95

That said lots for the redemption of which money was so deposited with the clerk are eighty-two lots out of the total of four hundred and eighty-two lots, on which levy had been previously endorsed by the marshal on his said execution.

That thereupon the clerk issued a certificate of redemption of said last mentioned lots, which was filed as your orator is informed and believes in the recorder's office of Cook county, in the State of Illinois, on the eleventh day of November, A. D. 1880, but your orator avers that said alleged redemption was not made in conformity with the laws of the State of Illinois, nor in the exercise of any right given by law to said Monroe and that said clerk had no lawful authority or power to issue such certificate of redemption and that the same is void as against the rights of your orator.

14. That after the endorsement of said levy on said execution issued on said judgment in favor of said Henry S. Monroe, and after said deposit of money by said Monroe as aforesaid, one Robert D. Fowler, claiming to have become the owner of
180 said judgment by assignment thereof did on the fifteenth day of November, A. D. 1880, deposit with the clerk of this court, assuming to act in conformity to the rules of this court above set forth concerning redemption, the further sum of sixty-two thousand and thirty-seven dollars and one cent, the said sum being represented by the entries on the books of said clerk to have been deposited by said Fowler for the redemption from said master's sale to your orator of the following lots in said subdivision; Lots number 15 to 28 both inclusive, 31 to 99 both inclusive, 300 to 387 both inclusive, 392 to 394 both inclusive, 399 to 497 both inclusive, 698 to 783 both inclusive, and 785 to 800 both inclusive, being three hundred and seventy-six other lots out of the four hundred and eighty-two lots upon which the said marshal had endorsed a levy upon his execution as aforesaid.

That the lots specified in the entries on the books of said clerk as being lots for the redemption of which money had been deposited with him either by said Monroe or by said Fowler, are in number four hundred and fifty-eight out of a total of four hundred and eighty-two, upon which said marshal has assumed
181 to make a levy, leaving out of the said lots so assumed to be levied on twenty-four lots for the redemption of which no money has been deposited as aforesaid, which said lots are numbers to 1 to 14 both inclusive, 30, 388 to 391 both inclusive, 395 to 398 both inclusive, and 784.

That the total amount deposited as aforesaid, by said Fowler, appears by the entries on the books of said clerk to have been made up as follows:

Amount deposited for redemption of lots last above mentioned as sought to be redeemed	$61,421 80
For clerk's fee	614 21
For certificate of redemption	1 00
Making a total of	$62,037 01

That thereupon the clerk issued a certificate of redemption of said lots, which was filed, as your orator is informed and believes, in the recorder's office of Cook county, in the State of Illinois, on the sixteenth day of No vember, A. D. 1880, that said certificate was made without authority of law and is void.

15. That thereupon the said marshal advertised all of the said lots and premises for the redemption of which money had been deposited as aforesaid by said Monroe and said Fowler, as also those for which no redemption money had been so deposited
181 for sale; that said advertisement was made in the Chicago Evening Journal, and that the following is a copy of said advertisement, to wit:

Marshal's Sale. No. 1322.

Pubtic notice is hereby given that by virtue of a writ of *fieri facias* issued out of the circuit court of the United States for the Northern District of Illinois, on a judgment rendered in said court at the October term thereof, A. D. 1880, in favor of Henry S. Monroe, and against William H. Cushman, I have this day levied upon the following described property, to wit: Lots numbered one hundred and sixty-seven (167) to one hundred and seventy-four, (174,) both inclusive; lots number one hundred and ninety-two (192) to two hundred and ten (210,) both inclusive; lots two hundred and twenty-five (225) to two hundred and thirty-five (235,) both inclusive; lots five hundred and sixty-two (562) to five hundred and seventy-two (572,) both inclusive; lots five hundred and eighty-seven (587) to six hundred and eight (608), both inclusive; lots six hundred and twenty-three (623) to six hundred and thirty-three (633,) both inclusive, and lots one (1) to ninety-nine (99,) both inclusive; lots three hundred (300) to four hundred and ninety-seven (497,) both inclusive;
183 lots six hundred and ninety-eight (698) to eight hundred (800,) both inclusive; all of said lots being in the South Side Homestead Association Addition, being a subdivision of the north half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of section nine (9,) township thirty-eight (38) north, range fourteen (14) east of the third principal meridian, all being in the county of Cook, State and northern district of Illinois, and that I will offer said property for sale at public vendue, to the highest and best bidder for cash, on the 8th day of December, A. D. 1880, at 11 o'clock, a. m., of

said day, at the north door of the United Snates custom house, in the city of Chicago, State and northern district of Illinois.

JESSE S. HILDRUP.
United States Marshal, Northern District of Illinois.
By JOHN STILWELL, *Deputy.*

Dated, Nov. 16, A. D. 1880.

16. Your orator avers that no levy appears endorsed on said execution as made on the 16th day of November, A. D. 1880, and that it is informed and believes that no such levy was ever made, that the only levy appearing on such execution is the one endorsed thereon as made on the ninth day of November, A. D. 1880; that no advertisement or sale appears to have been
184 ever made under said levy so actually endorsed on said execution, and that nothing in said execution or the endorsements thereon, nor in any of the proceedings or acts of said marshal thereunder, indicate that said levy or said sale were pretended to be made for purposes of a redemption from the sale of said master in chancery, or in the exercise of any right of redemption whatever.

17. But your orator is informed that on the eighth day of December, A. D. 1880, said marshal offered said lots and premises for sale, and that at said sale said Robert D. Fowler bid for said lots, but whether separately or together your orator has not been informed and has no knowledge; an amount of money equal to that which had been deposited by said Fowler and Monroe with the clerk aforesaid, and that thereupon the said marshal pretended to make sale thereof to said Fowler for the money so paid, but that no moneys whatever were paid by said Fowler or by said Monroe in redemption from said mortgage sale to said marshal, and that no other moneys have been paid for the purposes of said redemption by said Fowler or
185 Monroe exceept the moneys pretended to have been deposited as aforesaid for that purpose with the clerk of this court; and your orator is informed and believes that upon payment of said money to said clerk, the said clerk assuming to act under the authority of the rules established by the order of this court as aforesaid, paid the said money into the registry of this court and deposited it in the sub-treasury of the United States, whence it can only be withdrawn, as your orator is advised, under an order to be hereafter entered by this court.

18. Your orator represents that said alleged redemption by said Robert D. Fowler, and said Monroe, is wholly void and ineffectual for the reason that the same is not made in conformity to nor by the authority of the law of the State of Illinois, where said lands are situated, nor in the exercise of any right given by the law of said State.

19. That the said marshal, having the execution in his hands, as aforesaid, had no power by law to sell the said premises thereunder for the purpose of redemption thereof from the sale of them made by the master as aforesaid to your orator, without having as a condition precedent thereto the money pay-
186 able on redemption to your orator, in his hands, that the law of the State of Illinois creates and regulates the right of redemption by a judgment creditor, and provides the conditions under which it may be exercised, that the rules of this court which require that the money intended to be paid for redemption, shall be paid to the clerk, and deposited in the sub-Treasury of the United States, and not to the marshal, are in violation of the statute creating the right of redemption in a judgment creditor, and that such statute gives no right to any such creditor to redeem by such proceeding, and that this court can give no other right than such as is provided by statute.

20. That said pretended redemption is wholly void and ineffective for the further reason, that even if said moneys might have lawfully have been paid as provided by the rule of this court instead of being paid to the officer having the execution as required by law, the amount so paid is insufficient to entitle such judgment creditor to redemption, that the lots so pretended to be redeemed by the money deposited by said Fowler, were sold to your orator for the sum of fifty-five thousand eight hun-
187 dred and thirty-eight dollars, and those forwhich money was deposited by said Monroe for $11,468.00, that by the law of the State, regulating redemption and providing the conditions upon which it might be made, which was in force when said mortgage was made and entered into the contract of mortgage, your orator was entitled to interest at the rate of ten per centum per annum from the time of its purchase at the master's sale, upon the amount there paid, until the time of redemption, if any should be made, that the amount to which your orator was entitled, was, on the tenth day of November, 1880, on the lots pretended to be redeemed by said Monroe, $12,885.57, and on the fifteenth day of November, A. D. 1880, on the other lots pretended to be redeemed by said Robert D. Fowler, the sum of sixty-two thousand eight hundred and seventeen dollars and seventy-five cents, and amount in each case largely in excess of the amount pretended to have been deposited for redemption, and amounting to the sum of $75,703.32, and for these reasons, and others, your orator insists that it is entitled to a deed of conveyance by the master, of all the premises purchased by it at said master's sale.

21. That your orator has heretofore called upon said
188 master and demanded of him a deed of all of said premises sold to it by said master as aforesaid, including the lots so pretended to be redeemed by said Monroe and Fowler; that said

master until said fourteenth day of December, A. D. 1880, desired to postpone a definite statement of that portion of said property he would convey to your orator until he had advised himself and should receive some direction from the court in the premises, but on the said fourteenth day of December he declined on account of said pretended redemption and the rule of the court in respect thereto to make such deed of the lots so pretended to be sold as aforesaid by said marshal to said Fowler, but he is willing, as your orator is advised to conform to such order as this court may make in the premises; that on the tenth day of December, A. D. 1880, a rule was asked for by your orator restraining said marshal from making any deed under his said pretended sale under execution and in redemption as aforesaid until the master should advise himself concerning his action, and that a rule restraining said marshal from making such deed until the further order of the court was accordingly entered,

189 but that said rule was rescinded on the fourteenth day of December, A. D. 1880, and your orator being apprehensive that said marshal would proceed to make such deed, notwithstanding the rights of your orator and notwithstanding no money had been put into his hands for redemption of said premises, caused protest in writing to be made to said marshal on the said fourteenth day of December, A. D. 1880, against his making a deed to any person in pursuance of said sale pretended to be made on said eighth day of December, A. D. 1880, and notice of a denial of the authority of said marshal to make such deed and notice that it would on that day file in this court its bill or petition asking that he should be restrained or enjoined from issuing such deed, and that on the morning of the fifteenth day of December, A. D. 1880, at half-past nine o'clock, before the Hon. Henry W. Blodgett, it would move said court for such injunction or restraining order.

22. That the said protest and notice in writing, delivered to said marshal, was in words and figures following, to wit:

190 "DECEMBER 14th, 1880.

"The Connecticut Mutual Life Insurance Company to Jesse S. Hildrup, U. S. marshal:

"On behalf of The Connecticut Mutual Life Insurance Company, we hereby notify you that we protest against your making a deed to any person in pursuance to a sale made by you on December 8th, 1880, on certain property in the South Side Homestead Addition, in Cook county, Illinois, under a judgment in favor of H. S. Monroe, and against W. H. Cushman, and deny your authority to make such deed, and hereby notify you that we shall to-day file in the circuit court of the United States

for the northern district of Illinois, a bill or petition asking that you be restrained or enjoined from issuing such a deed, and that we will, on December 15th, 1880, at half-past 9 o'clock a. m., before Hon. H. W. Blodgett, move said court for an injunction or restraining order therein, enjoining you from making any such deed.

"ISHAM & LINCOLN,
"*Solicitors for the Connecticut Mutual Life Insurance Co.*"

191 23. That afterwards, on the same day, said marshal informed your orator that he would not make any such deed while the question of his right to do so remain undetermined by this court, and that in no event would he make such deed during the time mentioned in said notice of motion for such restraining order.

24. That notwithstanding, afterwards, and on the same day, the said marshal did, as your orator is informed and believes, execute and deliver a deed of the lots and premises sold at his pretended sale to an alleged purchaser thereat, to wit, to said Robert D. Fowler.

25. That said deed so made by said marshal, was made in violation of law, and the making and delivery was an act in excess of the lawful power of said marshal acting under the execution issued upon the judgment aforesaid, and is null and void as against the rights of your orator.

26. Your orator prays, therefore, that a rule may be entered in this cause, directing said master in chancery to convey to your orator by his deed of conveyance the premises so sold
192 by him to your orator as aforesaid, so pretended to be redeemed by said Monroe and Robert D. Fowler, and that said Robert D. Fowler and Jesse S. Hildrup, the marshal of this court, may be made parties defendant to this petition, and that they may answer the same, if they choose so to do, but without oath (answer under oath being hereby expressly waived), and that a rule may be entered directing them, within a short time to be named by this court, to show cause, if they desire to do so, why such rule should not be made as is above prayed directing the master in chancery of this court to convey said premises so attempted to be redeemed and conveyed by said marshal to said Fowler to your orator, and that said Robert D. Fowler, his agents, attorneys, and assigns as aforesaid may be enjoined by this court from entering upon or taking the possession of the premises or any part thereof described in said deed of the premises so pretended to be sold by said marshal under execution as aforesaid, and from selling or conveying the same, or making any deed, contract, or arrangement of any kind whatever, or doing any other act whereby third persons through them

193 may assign any interest in or claim upon said premises or any part thereof, and that your orator may have such other or further relief in the premises as the nature of the case may require.

And your orator will ever pray, etc.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By ISHAM & LINCOLN, *its Solicitors.*

C. BECKWITH,
Of Counsel.

Exhibit A.

Ordered. That the following rules be entered in regard to the redemption of property from sales under decrees in chancery in this court:

First. That whenever any real estate is sold by a master in chancery, special commissioner, or other officer of this court, by virtue of any decree of foreclosure of mortgage, or vendor's lien, or mechanics' lien, or for the payment of money, the master in chancery or officer making such sale shall, instead of executing a deed for the property so sold, give to the purchaser a certificate describing the premises purchased by him showing the amount paid therefor, or if purchased by the complainant in whose
194 favor the decree is made the amount of his bid, and that such purchaser will be entitled to a deed of the property property so purchased on the expiration of fifteen months from the date of such sale, unless said property shall have been duly redeemed.

Second. It shall be the duty of the master in chancery or other officer making such sale to report the same to the court within ten days from the day of the making thereof unless time for filing said report shall be extended by the court, which report shall be confirmed as a matter of course unless objections to said sale are filed within twenty days after the said report is required to be filed.

Third. Any defendant in the suit in which such decree is rendered his heirs, administrators, or assigns, or any person interested through or under the defendant in the premises so sold, may within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his heirs, executors, or assigns, or to the clerk of this court for the benefit of such purchaser, his executors, administrators, or assigns, the sum of money for which said premises were sold or bid off, with interest at the rate of ten per cent. per annum from the date of such sale, and in case such redemption is made by payment
194 of the money to the clerk, the person so redeeming shall also pay an additional sum of one per cent. on the amount

so paid in as the clerks' fee for receiving and disbursing said redemption, and the clerk on receiving said redemption money shall at once deposit the same in the registry of this court and file a certificate among the papers in the cause in which said decree was entered, stating that said real estate has been redeemed.

Fourth. If property sold under any decree of this court shall not be redeemed by the defendant or defendants in the decree or some persons claiming by through or under him or them within twelve months from the date of such sale, then any creditor of the debtor, defendant, or defendants in such decree who holds a decree or judgment in full force, and on which he is entitled to execution against such debtor, defendant or defendants may redeem said property after the expiration of twelve months, and before the expiration of fifteen months in the following manner: such creditor shall sue out an execution on his decree or judgment and place the same in the hands of the proper officer to execute,
196 who shall thereupon endorse on such execution a levy on the property which is to be redeemed and thereupon the person desiring to make such redemption shall pay to the holder of such certificate or to the clerk of this court, the amount for which the premises to be redeemed were sold with interest at the rate of ten per cent. per annum from the date of such sale, and if the redemption is made by the payment of the money to the clerk, there shall also be paid the additional sum of one per cent. on the amount of money so paid to redeem, as the clerk's fee for receiving and disbursing said redemption money.

And the clerk shall at once pay said money into the registry of the court for the use of the person entitled thereto and give a receipt for said sum to the person making such redemption. And the clerk of this court shall thereupon make and file in the office of the recorder of the county where said premises are situate a certificate of such redemption, and the officer in whose hands such execution shall have been placed and who shall have made said levy shall proceed in the manner required by the twentieth and twenty-first sections of chapter seventy-seven of
197 the Revised Statutes of Illinois, entitled "Judgments, decrees and executions." After the first redemption, made as aforesaid, any other judgment or decree creditor who shall have the right under the laws of this State to redeem said premises from the first redeeming judgment or decree creditor may apply to this court for leave to redeem said premises from the creditor first redeeming the same, and the court will make such order in regard to further redemption as the rights of the parties under the law shall seem to require.

Fifth. In all cases when the master in chancery or any other special or general officer of this court is required to make sale of real estate under any decree or order of the court made in any

chancery suit, notice of the time and place of such sale shall be given by publication in some newspaper of general circulation published in the county where said real estate is situated, and in case there is no such newspaper published in such county then such publication shall be made in one of the newspapers hereafter named published in the city of Chicago, such publication to be made as often as once each week for three successive weeks, and the first publication shall be at least twenty days before the day fixed for such sale.

198 In cases of sales of real estate under such decrees situate in Cook county, the notice above provided for shall be published either in the Chicago Evening Journal, the Inter-Ocean, or the Chicago Legal News.

Northern District of Illinois, ss:

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the eleventh day of July, A. D. 1878, in relation to the redemption of property from sales under decrees of foreclosure as the same appears from the records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this twenty-seventh day of September, A. D. 1878.

[SEAL.] W. H. BRADLEY, *Clerk.*

199 Afterwards, to wit, on the fourth day of February, A. D. 1881, in the December term, A. D. 1880, of said court in the record of the proceedings thereof in said entitled cause appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN *et al.* } In Chancery.

And now comes on to be heard, the motion filed by the complainant herein on the sixteenth day of December, A. D. 1880, for leave to file in this cause the petition of complainant annexed to said motion. And the court, having considered said motion and said petition, it is ordered that said motion for leave to file said petition, and the rule on the master asked for by said petition, be and they are hereby denied.

200 Afterwards, to wit, on the twenty-eighth day of June, A. D. 1881, there was filed in said clerk's office, the motion

of said complainant in said cause, which said motion is in the words and figures following, to wit:

Motion of Complainant.

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *vs.* ANNA C. CUSHMAN *et al.* } In Chancery, Gen. No. 15249.

And now comes the said complainant, The Connecticut Mutual Life Insurance Company, by Isham and Lincoln, its solicitors, and shows to the court, that under the decree for sale entered in this cause on the fourteenth of July, A. D. 1879, a sale of the mortgaged premises mentioned in the said decree, was made by the master in chancery of this court, on the fifteenth day of August, A. D. 1879, and that at such sale, the said complainant in this cause became the purchaser of all of said mortgaged premises, namely, of all of said eight hundred lots in said decree mentioned, excepting lots number one, two and three, thereof; and particularly because the purchaser at said sale of lots sold by said master, and known as lots numbered one hundred and sixty-seven to one hundred and seventy-four, both inclusive; two hundred and twenty-five to
201 two hundred and thirty-five, both inclusive; one hundred and ninety-two to two hundred and ten, both inclusive; five hundred and sixty-two to five hundred and seventy-two, both inclusive; five hundred and eighty-seven to six hundred and eight, both inclusive; six hundred and twenty-three to six hundred and thirty-three, both inclusive; fifteen to twenty-nine, both inclusive; thirty-one to ninety-nine, both inclusive; three hundred to three hundred and eighty-seven, both inclusive; three hundred and ninety-two to three hundred and ninety-four, both inclusive; three hundred and ninety-nine to four hundred and ninety-seven, both inclusive; six hundred and ninety-eight to seven hundred and eighty-three, both inclusive, and seven hundred and eighty-five to eight hundred, both inclusive, making in all a total of four hundred and fifty-eight lots; that the said complainant received from the said master in chancery a certificate of the purchase of said lots, which the said complainant now holds and owns, and herewith presents to the court; that the time provided by law for the redemption of said lots, or any of them, has expired without lawful redemption thereof, or any part thereof, having been made by any person; that said complainant became thereupon and remains and is entitled to receive a deed of conveyance of said premises from said master in

chancery, as provided by law, and that all the matters and things above stated are shown of record in this court, and by the files
202 thereof in said cause, to which said record and files reference for greater security is hereby made; that upon expiration of the time of redemption aforesaid, the said complainant called upon said master, presenting the certificate of purchase held and owned by the complainant, as aforesaid, and demanded of said master a deed of conveyance of the said lots hereinbefore mentioned, but that said master in chancery has hitherto refused, and still does refuse, to make such deed to said holder of said certificate; whereupon the said complainant, holder of said certificate as aforesaid, now moves the court that a rule may be entered in this cause directing said master in chancery, Henry W. Bishop, Esq., to convey to it said premises above described, or to show cause within a short time, to be named by the court, why such conveyance should not be made.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By ISHAM & LINCOLN, *Its Solicitors.*

Endorsed: Filed June 28, 1881. Wm. H. Bradley, cl'k.

203 Afterwards, to wit, on the twenty-ninth day of June, A. D. 1881, in the adjourned May term, A. D. 1881, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
ANNA C. CUSHMAN *et al.*
} In Chancery.

And now, on this day, the motion filed on the twenty-eighth day of June, A. D. 1881, of the complainant in this cause, holder of the master's certificate of sale, issued by Henry W. Bishop, Esq., master in chancery of this court, in pursuance of the decree of sale entered in this cause on the fourteenth day of July, A. D. 1879, for a rule on said master in chancery to make to the complainant a deed of the premises described in said motion, or show cause to this court why said deed should not be made, coming on to be heard, and due notice of the hearing of said motion having been given to said master, it is ordered that said master show cause, if any there be, to this court, within ten days from this date, why said deed should not be made according to said motion.

204 Afterwards, to wit, on the sixth day of July, A. D. 1881, in the July term, A. D. 1881, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN *et al.*	In Chancery.

On motion of Mr. Page, solicitor, it is ordered by the court that the rule on Henry W. Bishop, Esq., master, &c., entered on the twenty-ninth day of June last, be extended ten days.

Afterwards, to wit, on the twentieth day of July, A. D. 1881, in the July term, A. D. 1881, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* ANNA C. CUSHMAN *et al.*	In Chancery.

On motion, it is ordered by the court that the rule on Henry W. Bishop, master, &c., entered herein on the twenty-ninth day of June last, be extended ten days.

205 On the same day, to wit, the twentieth day of July, A. D. 1881, there was filed in said clerk's office in said cause the answer of Henry W. Bishop, a master in chancery of said court, which said answer is in the words and figures following, to wit:

Answer of Henry W. Bishop, master, etc.

In the Circuit Court of the United States for the Northern District of Illinois.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. *vs.* ANNA C. CUSHMAN *et al.*	In Chancery, General No. 15249.

To the honorable judges of said court.

This respondent, Henry W. Bishop, having been, on the twenty-ninth day of June, A. D. 1881, by an order entered in this cause, ruled to show cause why the motion of said complainant filed in this cause on the twenty-eighth day of June, A. D. 1881, should not be granted, and a rule entered upon this respon-

dent to make a deed of certain lots in said motion particularly described, for answer to said motion, and by way of so showing cause says:

That it is true as in said motion stated that this respondent, under decree of sale entered in this cause on the fourteenth day of July, A. D. 1879, made sale of the mortgaged premises
206 in said decree mentioned, as master in chancery of said court on the 15th day of August, A. D. 1878, and on said last mentioned day sold all of the lots enumerated and described in said motion, to said complainant, and also that this respondent executed and delivered to said complainant a certificate of the purchase of all said lots in said motion mentioned, and that this respondent is informed and believes it to be true that said complainant now holds and owns said certificate of purchase.

Further answering, this respondent says that the time for the redemption from said sale of said lots or any of them has expired, and further admits that said complainant, after the expiration of the time of redemption aforesaid, called upon this respondent presenting the certificate of purchase issued by him for the lots aforesaid, and demanded of this respondent a deed of conveyance of the said lots in said motion mentioned; but this respondent had before the making of such demand by said complainant been notified by certain parties claiming to be interested, that they had redeemed the said lots in said motion particularly described from said master's sale; and that thereupon this respondent investigated the proceedings in this cause, so far as he deemed necessary, and what, if any proceedings had been taken by any person towards the redemption of any of the premises sold by me as such master at the foreclosure sale aforesaid, and found as follows:

That on January the twenty-ninth, A. D. 1870, William H. W. Cushman, and Anna C., his wife, executed to the
207 Connecticut Mutual Life Insurance Company a mortgage of the north half of the nortwest quarter of section nine in township thirty-eight north, range fourteen east of the third principal meridian, Cook county, Illinois, to secure seventy-five thousand dollars thereon at nine per cent. interest, as stated in the bill of complaint herein.

That on November the thirteenth, A. D. 1876, William H. W. Cushman conveyed to William H. Cushman the said north half of the northwest quarter, etc., excepting certain small portions that had been theretofore conveyed to other parties.

That on December twelfth, A. D. 1877, The Connecticut Mutual Life Insurance Company filed in the United States circuit court in and for the northern district of Illinois its bill to foreclose the above mortgage, making W. H. W. Cushman and

wife, William H. Cushman and wife and others defendants thereto.

That a decree was entered in said cause on July fourteenth, A. D. 1879, which found the sum $110,278.50 to be a first and valid lien on the said premises, and ordered the sale of the same or as much as might be necessary to satisfy said sum, together with interest thereon, by this respondent, as master in chancery of said court, said land to be sold in a certain order set out in said decree.

This respondent's report of sale under said decree, filed August twenty-third, A. D. 1879, shows that on August fifteenth,
208 A. D. 1879, he offered for sale separately in lots, all of the lots in a sub-division which had been made of said premises referred to in said decree called the "South Side Homestead Association Addition," excepting lots 1, 2, 3, 9, 10, 11, 395, 396, 397, 398, and 784, and then and there struck off and sold the same separately under the order, and for the various amoun ts mentioned and set forth in the shedule attached to said report marked "A," the whole having been sold to the said The Connecticut Mutual Life Insurance Company for the total sum of $110,288, and also reported the sale of said excepted lots in the order prescribed by the decree.

That on October tenth, A. D. 1879, an order was entered by this honorable court confirming said report and decreeing that the defendants and all claiming under them since the commencement of this suit be barred and foreclosed of all equity of redemption in and to said premises, and every part therein that should not be redeemed according to law.

That on November third, A. D. 1880, a judgment was recovered in the circuit court of the United States for the northern district of Illinois by Henry S. Monroe against said William H. Cushman for the sum of $10,150 and costs of suit. On the ninth of November, Monroe sued out an execution upon this said judgment and placed it in the hands of Jesse S. Hildrup, marshal of the United States for the said northern district of Illinois to exe-
cute, and thereupon said Hildrup as such marshal endorsed
209 a certain levy of said execution, a copy of which said execution together with said levy and other endorsements placed thereon by said marshal, this respondent attaches to this his answer as "Exhibit A," and prays reference thereto with like effect as if the same were herein at length set forth.

That on November tenth, A. D. 1880, the said Henry S. Monroe deposited with the clerk of the said United States circuit court the sum of $12,741.95, and that the said clerk entered the same upon his books, as follows: Amount deposited for redemption, $12,614.80; for clerk's fee, $126.15; for certificate of redemption, $1.00; total, $12,741.95; and that said Monroe deposited said

moneys to apply on the redemption of the following described lots, to wit: Lots one hundred and sixty-seven to one hundred and seventy-four, both inclusive; lots two hundred and twenty-five to two hundred and thirty-five, both inclusive; lots one hundred and ninety-two to two hundred and ten, both inclusive; lots five hundred and sixty-two to five hundred and seventy-two, both inclusive; lots five hundred and eighty-seven to six hundred and eight, both inclusive; lots six hundred and twenty-three to six hundred and thirty-three, both inclusive; all in the said South Side Homestead Addition. And this respondent further states that the prices for which the said lots last described were sold at said foreclosure sale were the sums set opposite each lot in the report of said sale filed herein by this respondent.

That the said payment was made to the clerk of the said
210 United States circuit court, and a certificate of redemption was issued by him thereupon, professing to act under the rules of court adopted July 11th, 1878, by the said United States circuit court for the northern district of Illinois, regulating the practice in cases of redemption in said court, a copy of which rules is hereto attached, marked Exhibit B.

That by an act of the General Assembly of the State of Illinois, which went into effect July first, A. D. 1879, the rate of interest required to be paid by parties seeking to redeem was fixed at eight per cent. per annum instead of ten, as has been theretofore, a copy of which act is attached to this answer as "Exhibit C," and made part hereof.

That on the fifteenth of November, A. D. 1880, said Monroe, for a valuable consideration, executed, acknowledged, and delivered to Robert D. Fowler an assignment of his said judgment against William H. Cushman, and of his interest in and to said levy and redemption claimed to have been made under said judgment, which assignment was on the sixteenth of November duly filed with said clerk, and on the fifteenth of November, A. D. 1880, said Robert D. Fowler, as such assignee paid to said clerk of said United States circuit court, professing to act therein in conformity with said redemption rules for purposes of redemption of the lots next hereinafter described a total amount of $62,037,01 and that thereupon said clerk received and credited said amount of money as follows, to wit: amount deposited for redemption of lots next hereinafter described
211 $61,421.80; amount deposited for clerk's fees, $614.21; amount deposited for certificate of redemption, $1; and that said Fowler deposited said money to apply on the redemption of the following described lots, to wit: lots fifteen to twenty-nine, both inclusive; lots thirty-one to ninety-nine, both inclusive; lots three hundred to three hundred and eighty-seven,

both inclusive; lots three hundred and ninety-two to three hundred and ninety-four, both inclusive; lots three hundred and ninety-nine to four hundred and ninety-seven, both inclusive; lots six hundred and ninety-eight to seven hundred and eighty-three, both inclusive, and lots seven hundred and eighty-five to eight hundred, both inclusive; all in said "South Side Homestead Association Addition." And thereupon the said clerk issued a certificate of redemption of said last mentioned lots of land to Robert D. Fowler, as assignee of Henry S. Monroe, and caused the said certificate to be filed for record in the recorder's office of Cook county, and that the prices for which last said mentioned lots were sold at said foreclosure sale was the sums set opposite said lots respectively, in the report of said sale by this respondent filed in said cause. That thereupon said marshal advertised all of said lots and premises for which redemption money had been deposited as aforesaid, by said Monroe and Fowler, as also those for which no redemption money had been deposited for sale; that said advertisement was made in the Chicago Evening Journal, and that the following is a copy of said advertisement, to wit:

212 *Marshal's Sale, No. 1322.*

Public notice is hereby given that by virtue of a writ of *fieri facias* issued out of the circuit court of the United States for the Northern District of Illinois, on a judgment rendered in said court at the October term thereof, A. D. 1880, in favor of Henry S. Monroe, and against William H. Cushman, I have this day levied upon the following described property, to wit: Lots numbered one hundred and sixty-seven (167) to one hundred and seventy-four, (174,) both inclusive; lots number one hundred and ninety-two (192) to two hundred and ten (210,) both inclusive; lots two hundred and twenty-five (225) to two hundred and thirty-five (235,) both inclusive; lots five hundred and sixty-two (562) to five hundred and seventy-two (572,) both inclusive; lots five hundred and eighty-seven (587) to six hundred and eight (608), both inclusive; lots six hundred and twenty-three (623) to six hundred and thirty-three (633,) both inclusive, and lots one (1) to ninety-nine (99,) both inclusive; lots three hundred (300) to four hundred and ninety-seven (497,) both inclusive; lots six hundred and ninety-eight (698) to eight hundred (800,) both inclusive; all of said lots being in the South Side Homestead Association Addition, being a subdivision of the north half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of section nine (9,) township thirty-eight (38) north, range fourteen (14) east of the third principal meridian, all being in the county of Cook, State and northern district of Illinois, and that I will offer said property

for sale at public vendue, to the highest and best bidder for cash, on the 8th day of December, A. D. 1880, at 11 o'clock, a. m., of said day, at the north door of the United States custom
213 house, in the city of Chicago, State and northern district of Illinois.

JESSE S. HILDRUP,
United States Marshal, Northern District of Illinois.
By JOHN STILWELL, *Deputy.*

Dated, Nov. 16, A. D. 1880.

That this respondent is informed and believes that said sale by said marshal, was held at the time and place specified in the said notice, and that the lots above described, for which redemption money had been deposited by Monroe and Fowler, were offered for sale, and that said lots were struck off to Robert D. Fowler, for the amount of money paid and deposited with the clerk, as aforesaid, together with interest on such amount at eight per cent. per annum from the date of said deposit with the clerk to the day of sale.

That on the tenth day of December, A. D. 1880, on motion of Isham and Lincoln, solicitors for The Connecticut Mutual Life Insurance Company, an order was entered in this cause in the said United States circuit court, restraining the marshal from delivering a deed of said lots to Robert D. Fowler, until a further order of court.

That on December fourteenth, A. L. 1880, said last mentioned order was vacated by the Honorable Henry W. Blodgett, sitting as judge in said circuit court, on motion of Hunter and Page, solicitors for said Fowler; and said marshal thereupon executed and delivered a deed for said lots, so sold, to Robert D.
214 Fowler, which deed was put on record in the recorder's office of Cook county, Illinois, on the same day, December fourteenth, A. D. 1880.

At the request of said complainant, I also include in this answer the following statement of facts to be considered by the court for whatever force or effect it may have in this cause, which facts I have learned from the records of this court; that at the time of filing the bill of foreclosure in this cause, said William H. W. Cushman was indebted to said complainant in the further sum of seventy-five thousand dollars, money loaned to him, together with a large amount of accumulated interest thereon, amounting in the aggregate to over ninety thousand dollars, which was secured to be paid by a certain mortgage on certain other premises and lands described in said mortgage, situated in the county of Cook, and State of Illinois. That upon said mortgage a bill of foreclosure was filed in the circuit court of the United States, in and for the northern district of Illinois, on the twenty-

seventh day of December, A. D. 1879, and that thereafter such proceedings were had that a decree of sale was made, and the premises sold by the master in chancery of said court, and that after said sale a judgment for a deficiency was entered on the eleventh day of October, A. D. 1880, in favor of said complainant, for the sum of $9,549.29, being a part of the indebtedness created by said mortgage, which deficiency judgment still remains due and wholly unpaid; that at the time of filing the bill of foreclosure in this cause, the said William H. W. Cush-
215 man was also indebted to said complainant in the further sum of thirty-five thousand dollars for money loaned to him, which was secured to be paid by another mortgage on certain other lands and premises, in said mortgage described, and situated in the said county of Cook, and State of Illinois. That on the thirteenth day of March, A. D. 1878, said complainant filed in the circuit court of the United States, for the northern district of Illinois, its other bill of complaint for the foreclosure of said last mentioned mortgage.

That at the time of filing the same the indebtedness secured thereby, together with its accumulation of interest amounted to more than the sum of fifty thousand dollars. That under said last mentioned bill of foreclosure such proceedings were had, that a decree was entered therein for the sale of said last mentioned mortgaged premises, and the same were sold by the master in chancery of said court, but not for enough to pay such mortgaged indebtedness, and that thereafter a deficiency judgment was entered by said court on the eleventh day of October, A. D. 1880, in favor of said complainant for the sum of $7,912.25 being a part of the indebtedness secured by said mortgage, which still remains due and wholly unpaid.

The mortgage under foreclosure, of which the sale first hereinbefore mentioned was made, was made on the twenty ninth day January, A. D. 1879; and a copy of the sections of the statutes of the State of Illinois, then in force governing the right of redemption from such sales is hereto attached marked "Exhibit D."

116 And this respondent further states that it has been represented unto him and he has been requested so to state by the said Robert D. Fowler, that on February 3d, 1881, the said Connecticut Mutual Life Insurance Company filed its bill of complaint, in the circuit court of Cook county, and State of Illinois, against the said Robert D. Fowler as defendant, in which said bill the said Connecticut Mutual Life Insurance Company, claiming to be the equitable owner of the above described premises, charged that said redemption and marshal's sale to said Fowler, are illegal and void, and prayed to have said marshal's deed to said Fowler set aside as a cloud upon its title; that subsequently

on the 18th of February, the said defendant caused said suit to be removed to this court where the same is now pending, all of which will fully appear from the files of said cause now in this court remaining. The said Fowler further represents unto this respondent and desires him so to state that on the twentieth day of July, he made a tender to the said Connecticut Mutual Life Insurance Company of the sum of six thousand two hundred and eighty-two (6,282) dollars to apply on account of said redemption as an additional and further sum besides the said amounts heretofore deposited with the clerk of this court, for the benefit of said company, but that said company declined and refused to accept said tender. That said tender was made in writing, a copy whereof is hereto attached marked Exhibit F.

Respectfully submitted. HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

217 EXHIBIT "A."

UNITED STATES OF AMERICA, *Northern District of Illinois.* } *ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that of the goods and chattels, lands and tenements of William H. Cushman, defendant, in your district, you cause to be made the sum of ten thousand one hundred and fifty-six dollars and ninety-five cents, which Henry S. Monroe, plaintiff, lately, to wit: on the third day of November, A. D. 1880, in our circuit court of the United States for the northern district of Illinois, before the judges thereof, at Chicago, in the district aforesaid, recovered against the said defendant, for damages which said plaintiff had sustained, as well by occasion of the non-performance of certain promises and undertakings in that behalf, and for his costs and charges by him about his suit in this behalf expended, whereof said defendant is convicted, as appears to us of record, and have you that money at the clerk's office of our said court in ninety days from the date hereof, to render to the said plaintiff for his damages and costs aforesaid, and have you also there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this ninth day of November, in the year of our Lord one thousand eight hundred and eighty, and of our independence the one hundred and fifth.

[SEAL OF CIRCUIT COURT U. S. NORTHERN DIST. ILLINOIS, 1855.]

218

W. H. BRADLEY, *Clerk.*

Rec'd November 9th, 1880, at 3:20 p. m.
J. S. HILDRUP, *U. S. M.*
J. S.

Endorsed: (Copy.) No. 6846.

Circuit Court United States Northern District of Illinois.

HENRY S. MONROE
vs.
WILLIAM H. CUSHMAN. } Fi. fa.

Damages	$10,150 00
Costs	6 95
Judgment for	$10,156 95
Defendant's costs	15
Collect	$10,157 10

Judgment rendered Nov. 3d, A. D. 1880.
WM. H. BRADLEY, *Clerk.*

FARLIN Q. BALL,
Plaintiff's Attorney.

By virtue of this writ, I have, this 9th day of November, 1880, levied upon the following described real estate, to wit:

Lots numbered 167, 168, 169, 170, 171, 172, 173, 174, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601,
219 602, 603, 604, 605, 606, 607, 608, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633 and 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350 to 368, both inclusive; 369 to 497, both inclusive; 698 to 722, both inclusive; 723 to 747, both inclusive; 748 to 766, both inclusive; 767 to 785, both inclusive; 786 to 800, both inclusive; all of said lots being in the South Side Homestead Association Addition, being a subdivision of the north half of

the northwest quarter of section 9, township 38 north, range 14 east of third principal meridian, in Cook county, State of Illinois.

JESSE S. HILDRUP,
U. S. Marshal.
By J. STILLWELL.

By order of attorneys for assignees of said judgment I released from above levy the following described lots, viz.: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 30, 388, 389, 390, 391, 397, 398.

J. S. HILDRUP,
U. S. Marshal.
By J. STILLWELL, *Deputy.*

On the 8th day of December, A. D. 1880, I sold to
220 Robert D. Fowler the following described lots, to wit:

168 to 174,	both	inclusive;	15 to 29,	both	inclusive.
192 to 210,	"	"	31 to 99,	"	"
225 to 235,	"	"	300 to 387,	"	"
562 to 572,	"	"	392 to 394,	"	"
587 to 608,	"	"	399 to 783,	"	"
623 to 633,	"	"	785 to 800,	"	"

For the sum of seventy-four thousand four hundred and fifteen dollars and eighty-four cents, this being the amount paid for the redemption of said lots, and a deed was issued to Robert D. Fowler for the same, and I return this writ into court this 8th day of February, A. D. 1881, wholly unsatisfied.

J. S. HILDRUP, *U. S. Marshal.*
By J. STILLWELL, *Deputy.*

Marshal's fees:

1 levy	50c.
1 return	10
1 deed	5 00
1 oath	50
Posting	1 50
Commissions	25
Advertising	14 40
	$22 25

Endorsed: Filed Feb'y 12, A. D. 1881. Wm. H. Bradley, clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the
221 United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the execution, together with the return of the

marshal endorsed thereon, filed in said court on the twelfth day of February, A. D. 1881, in the cause wherein Henry S. Monroe is the complainant, and William H. Cushman is the defendant, as the same appears from the original thereof now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 20th day of July, A. D. 1881.

[SEAL.] WM. H. BRADLEY, *Clerk.*

EXHIBIT "B."

Ordered, that the following rules be entered in regard to the redemption of property from sales under decrees in chancery in this court:

First. That whenever any real estate is sold by a master in chancery, special commissioner, or other officer of this court, by virtue of any decree of foreclosure of mortgage or vendor's lien, or mechanics' lien, or for the payment of money, the master in chancery, or officer making such sale, shall, instead of executing a deed for the property so sold, give to the purchaser a certificate describing the premises purchased by him, showing the amount paid therefor, or, if purchased by the complainant, in whose favor the decree is made, the amount of his bid, and that such
222 purchaser will be entitled to a deed of the property so purchased, on the expiration of fifteen months from the date of said sale, unless said property shall have been duly redeemed.

Second. It shall be the duty of the master in chancery, or other officer making such sale, to report the same to the court within ten days from the day of the making thereof, unless time for filing said report shall be extended by the court, which report shall be confirmed as a matter of course, unless objections to said sale are filed within twenty days after said report is required to be filed.

Third. Any defendant in the suit in which such decree is rendered, his heirs, administrators, or assigns, or any person interested through or under the defendant in the premises so sold, may, within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his heirs, executors, or assigns, or to the clerk of this court for the benefit of such purchaser, his executors, administrators, or assigns, the sum of money for which said premises were sold or bid off, with interest at the rate of ten per cent. per annum from the date of such sale, and in case such redemption is made by payment of the money to the clerk, the person so redeeming shall also pay an additional sum of one per cent. on the amount so paid in as the clerk's fee for receiving and disbursing said redemption, and the

clerk on receiving said redemption money shall at once
223 deposit the same in the registry of this court and file a certificate among the papers in the cause in which said decree was entered, stating that said real estate has been redeemed.

Fourth. If property sold under any decree of this court shall not be redeemed by the defendant, or defendants in the decree, or some persons claiming by, through or under him or them, within twelve months from the date of such sale, then any creditor of the debtor defendant, or defendants, in such decree who holds a decree or judgment in full force, and on which he is entitled to execution against such debtor defendant, or defendants, may redeem said property after the expiration of twelve months and before the expiration of fifteen months, in the following manner: such creditor shall sue out an execution on his decree or judgment, and place the same in the hands of the proper officer to execute, who shall thereupon endorse on such execution a levy on the property which is to be redeemed, and thereupon the person desiring to make such redemption shall pay to the holder of such certificate, or to the clerk of this court, the amount for which the premises to be redeemed were sold, with interest at the rate of ten per cent. per annum from the date of such sale, and if the redemption is made by the payment of the money to the clerk, there shall also be paid the additional sum of one per cent. on the amount of money so paid to redeem, as the clerk's fee for receiving and disbursing said redemption money. And
the clerk shall at once pay said money into the registry
224 of the court for the use of the person entitled thereto, and give a receipt for said sum to the person making such redemption.

And the clerk of this court shall thereupon make and file in the office of the recorder of the county where said premises are situate, a certificate of such redemption, and the officer in whose hands said execution shall have been placed, and who shall have made said levy, shall proceed in the manner required by the twentieth and twenty-first sections of chapter seventy-seven of the Revised Statutes of Illinois, entitled "Judgments, decrees, and executions." After the first redemption, made as aforesaid, any other judgment or decree creditor who shall have the right under the laws of this State to redeem said premises from the first redeeming judgment or decree creditor may apply to this court for leave to redeem said premises from the creditor first redeeming the same, and the court will make such order in regard to further redemption as the rights of the parties under the law shall seem to require.

Fifth. In all cases when the master in chancery or any other special or general officer of this court is required to make sale of

real estate under any decree or order of the court made in any chancery suit, notice of the time and place of such sale shall be given by publication in some newspaper of general circulation, published in the county where said real estate is situated, and in case there is no such newspaper published in such county, then such publication shall be made in one of the newspapers
225 hereafter named, published in the city of Chicago, such publication to be made as often as once each week for three successive weeks, and the first publication shall be at least twenty days before the day fixed for such sale.

In cases of sales of real estate under such decrees, situate in Cook county, the notice above provided for shall be published either in the Chicago Evening Journal, the Inter Ocean, or the Chicago Legal News.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court, on the eleventh day of July, A. D. 1878, in relation to the redemption of property from sales under decrees of foreclosure, as the same appears from the records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 27th day of September, A. D. 1880.

[SEAL.] WM. H. BRADLEY, *Clerk.*

226 EXHIBIT "C."

Sections 20 and 21 of chap. 77, Revised Statutes of Illinois, 1874, as amended by act of May 31st, 1879, in force July 1, 1879.

§ 20. If such redemption is not made any decree or judgment creditor, his executors, administrators, or assigns, may after the expiration of twelve months, and within fifteen months after the the sale, redeem the premises in the following manner: Such creditor, his executors, administrators, or assigns, may sue out an execution upon his judgment or decree, and place the same in the hands of the sheriff or other proper officer to execute the same, who shall endorse upon the back thereof a levy of the premises desired to be redeemed; and the persons desiring to make such redemption shall pay to such officer the amount for which the premises to be redeemed were sold with interest thereon at the rate of eight per centum per annum from the date of the sale, for the use of the purchase of such premises, his executors, administrators, or assigns; whereupon such officer shall make and file in the office of the recorder of the county in which

the premises are situated a certificate of such redemption, and shall advertise and offer the premises for sale under said execution as in other cases of sale on execution.

§ 21. The creditor, his executors, administrators, or assigns, having so redeemed, shall be considered as having bid at such
227 sale the amount of the redemption money so paid by him, with interest thereon at the rate of eight per centum per annum from the date of such redemption to the day of such sale, with the cost of such redemption and sale; and if no greater amount is bid at such sale, the premises shall be struck off to the person making such redemption, and the officer shall forthwith execute a deed of the premises to him, and no other redemption shall be allowed.

EXHIBIT D.

Extracts from Revised Statutes of Illinois, 1845, pp. 302–305, title "Judgments and Executions."

SEC. 12. Whenever any lands or tenements shall be sold by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing a deed for the premises sold, to give to the purchaser or purchasers of such land or tenements a certificate in writing describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed as is provided in this chapter, and such sheriff or other officer, shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate, signed by him; and such cer-
228 tificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

SEC. 13. It shall be lawful for any defendant, his heirs, executors, administrators, or grantees, whose lands or tenements shall be sold by virtue of any execution, within twelve months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators, or assigns, or to the sheriff or other officer who sold the same for benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per centum from the time of such sale, and on such sum being made as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

SEC. 14. After the expiration of twelve months, and at any time before the expiration of fifteen months from the sale of any lands or tenements under the provisions of the preceding sections

hereof, it shall be lawful for any judgment creditor to redeem the same in the manner following: Such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer to execute the same; and thereupon said officer shall endorse upon the back of said execution a levy upon the land or tenements which said judgment creditor may wish to redeem, and said judgment creditor shall pay to said officer, into whose hands he shall have placed his execution as aforesaid, the amount of money for which said premises may have been sold, with ten per centum per annum interest thereon from the date of such sale, for the use of the purchaser thereof, his executors, administrators, or assigns, upon payment of which said officer shall file in the recorder's office of the county in which said lands are situated a certificate of the redemption thereof by said judgment creditor under said execution, and shall advertise and offer the same for sale under and by virtue of said execution, in the same manner that other lands are required to be advertised and exposed to sale on execution in other cases.

SEC. 15. Any judgment creditor having so redeemed such lands shall be considered as having bid at such sale the amount of said redemption money so paid by him, and interest thereon from the date of such redemption to the day of sale; and if no bid greater than said amount shall be offered, the lands shall be struck off and sold to such judgment creditor or creditors, and a deed thereof shall forthwith be executed by such officer to such creditor or creditors, and no other redemption shall be allowed; but if another and higher bid shall be made therefor, and the said lands sold for more than the amount of said redemption money and interest, as last aforesaid, the excess over and above the amount of the same shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of purchase shall be executed to the new purchaser in the manner hereinbefore prescribed for a deed of said land so sold within sixty days from the date of such sale, unless the same shall be redeemed in the meantime in the manner herein prescribed by some other judgment creditor, and if said lands shall be redeemed from said second purchaser, the same shall be done in the same manner and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale, as is hereinbefore required in case of the first redemption; and such lands may be successively redeemed within every period of sixty days so long as there shall be a judgment creditor disposed to redeem the same on the terms and in the manner aforesaid; and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall

have been last redeemed, or his successor in office, to execute a deed for the lands so sold to the last purchaser, in like manner as other deeds for lands sold on execution are made.

SEC. 16. Any judgment creditor or creditors may redeem the whole or any part or portion of the lands or tenements previously sold upon execution, provided such redemption shall be made in the like distinct quantities or parcels in which the same were sold.

SEC. 17. No commission upon the amount of the redemption money paid in any case shall be allowed to the officer receiving the same, but the usual commission shall be allowed the
231 officer selling said premises on the excess made over and above the amount of said redemption money and interest, the duplicate copy of the certificate of purchase required in the twelfth section hereof shall be filed in the office of the recorder of the county in which the lands so sold under execution shall be situated.

SEC. 22. If such lands or tenements so sold shall not be redeemed as aforesaid, either by the defendant or by such creditor as aforesaid, within fifteen months from the time of such sale, it shall be the duty of the sheriff or other officer who sold the same, or his successor in office, or his executors or administrators, to complete such sale by executing a deed to the purchaser; and if any creditor shall redeem such lands and tenements as aforesaid, it shall be the duty of the sheriff, or other officer, on the expiration of fifteen months from the time of such sale, to execute a deed to such creditor as the original purchaser; and such deeds shall be as valid and effectual in law as if such creditor had been the original purchaser.

SEC. 24. In all cases hereafter where lands shall be sold under and by virtue of any decree of a court of equity for the sale of mortgaged lands, it shall be lawful for the mortgagors of such lands, his heirs, executors, administrators or grantors, to redeem the same in the manner prescribed in this chapter for the redemption of lands sold by virtue of executions issued upon judgments at common law; and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands in like manner sold upon executions issued upon judgments at common law.

232 EXHIBIT F.

To the Connecticut Mutual Life Insurance Company:

The undersigned, Robert D. Fowler, protesting that he redeemed the following premises, situate in Cook county, Ills., viz.: Lots numbered 167 to 174 inclusive, 192 to 210 inclusive, 225 to 235 inclusive, 562 to 572 inclusive, 587 to 608 inclusive, 623 to

633 inclusive, 15 to 29 inclusive, 31 to 99 inclusive, 300 to 387 inclusive, 392 to 394 inclusive, 399 to 497 inclusive, 698 to 783 inclusive, and 785 to 800 inclusive, all in the South Side Homestead Association Addition, being a subdivision of the N. ½ N. W. ¼ sec. 9, 38, 14, from a sale had Aug. 14, 1879, under a decree rendered in the United States circuit court for the northern district of Illinois, in a case wherein said Connecticut Mutual Life Insurance Company was complainant and Anna C. Cushman and others were defendants; and that by and through a sale and deed of the marshal of the United States for said northern district of Illinois he is now the owner in fee of said property; yet, in order to avoid any pretended claim of the said Connecticut Mutual Life Insurance Company in law or equity to the premises, he, the said Robert D. Fowler, does hereby offer and tender to the said Connecticut Mutual Life Insurance Company the sum of six thousand two hundred and eighty-two (6,282) dollars. in addition to the amount heretofore deposited with the clerk
233 of the said United States circuit court court for the benefit of said company.

Chicago, July 20th, 1881.

ROBERT D. FOWLER.
By WM. R. PAGE,
His Solicitor.

Endorsed: Filed July 20, 1881. Wm. H. Bradley, clerk.

234 Afterwards, to wit, on the twenty-first day of July, A. D. 1881, in the July term, A. D. 1881, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Order.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
ANNA C. CUSHMAN *et al.*
} In Chancery.

And now, on this day, come the said complainant, by its solicitors, and Henry W. Bishop, master in chancery, and said master presents to the court his return to the rule entered in this cause on the twenty-ninth day of June, A. D. 1881, requiring him to show cause why he should not execute a deed to complainant in accordance with its motion filed herein, on the twenty-eighth day of June, A. D. 1881, to the premises in said motion described. And the court, having fully considered said return, doth order and decree that said rule on said master be and the same is hereby discharged, and doth also deny said motion of said complainant,

to which ruling of the court said complainant duly then and there excepted.

And thereupon, in open court the said complainant doth pray an appeal herein to the Supreme Court of the United States,
which is granted upon said complainant, filing herein an
235 appeal bond in the penal sum of five hundred dollars, with
Edward S. Isham as security, with sixty days from date.

And leave is also hereby given said complainant to file herein a certificate of evidence within sixty days if it sees fit so to do.

236 Afterwards, to wit, on the fourteenth day of September, A. D. 1881, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that we, The Connecticut Mutual Life Insurance Company, a corporation subsisting by the laws of the State of Connecticut, and located at and doing business in Hartford, in the said State of Connecticut, as principal, and Edward S. Isham, of Chicago, in the county of Cook, and State of Illinois, as surety, are held and firmly bound unto Anna C. Cushman, The South Side Homestead Association of the City of Chicago, a corporation, etc., James Murphy, Catherine Murphy, his wife, William D. Kerfoot, William A. Merigold, Jacob Loewe and Mary Loewe, his wife, John Schieberl, Helena Schieberl, his wife, Peter H. Hoeuk, Mary Hoeuk, his wife, Aaron Gibbs, Louis D. Hoard, Hermann Wiechmann, Fredericka Wiechmann, his wife, Henry W. Kuhlmann, Caroline F. Wilson, Isaac N. Hardin, Gertrude H. Hardin, his wife, William H. Cushman, Adeline D. Cushman, his wife, Illinois Starch Company, a corporation, etc., John R. Adams, Levi Rosenfeld, Jacob Rosenberg, The Newark Savings Institution of Newark, New Jersey, a corporation, &c., Salome Hathaway, Elnathan P. Hatheway, Edgar Loomis, Martin P.
Follett, The National Bank of Illinois, a corporation, &c.,
237 Wm. M. Derby, John E. Owsley, Jesse Spalding, receiver,
The Commercial National Bank of Chicago, a corporation, etc., The National City Bank of Ottawa, Illinois, a corporation, etc., Washington Libby, John M. Burdsall, Ann McCarty, Orrin Forsythe, Daniel J. Callahan, Edward F. Hyland, Michael Finncan, Joshua Knickerbocker, Jacob Gross, Ezra T. Durland, John Terwilliger, John A. Waterman, Henry E. Mallory, Herbert C. Mallory, George E. Bensley, John B. Bensley, Daniel Wagner, Swain Nelson, Olof Benson, Charles O. McLane, George H. Manlove, W. C. Bronson, Frederick Bauman, Edward Bauman, J. S. Wallace, Bernhard Nold, John W. Waughop, George Forbes, Henry Root, John J. Mitchell, D. W. Graham, Ferdinand Wengi,

Henry Cregan, Caroline F. Wilson, executrix of the last will and testament of Charles L. Wilson, deceased, Louisa F. Wilson, an infant, Jesse Spalding, Nathan H. Walworth, receiver of the City National Bank of Chicago, Lewis C. Ellsworth, receiver, Sherman Lealand, administrator of the estate of William H. W. Cushman, deceased, in the sum of five hundred dollars to be paid unto said last mentioned persons, their executors, administrators, successors, and assigns, by which payment well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents.

Sealed with our seals and dated this fifth day of August, A. D. 1881.

Whereas the above named, The Connecticut Mutual Life Insurance Company hath taken an appeal to the Supreme
238 Court of the United States to reverse a decree entered in the circuit court of the United States in and for the northern district of Illinois, ina cause wherein The Connecticut Mutual Life Insurance Company was complainant and Anna C. Cushman and others were defendants.

Now, therefore, the condition of this obligation is such that if the above named, The Connecticut Mutual Life Insurance Company, shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make its plea good, then this obligation shall be void, otherwise to remain in full force and effect.

THE CONNECTICUT MUTUAL LIFE
[SEAL.] INSURANCE COMPANY,
By JOHN M. TAYLOR, *Secretary.*
EDWD. S. ISHAM.

Approved: H. W. BLODGETT,
District Judge.

Endorsed: Filed September 14th, 1881. Wm. H. Bradley, clerk.

239 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court, in the cause wherein The Connecticut Mutual Life Insurance Company is the complainant, and Anna C. Cushman *et al.* are the defendants, as the same appears from the files and records of said court, now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district,

this fourth day of October, A. D. 1881, and of our Independence the 106th year.

[SEAL.] WM. H. BRADLEY, *Clerk*

Endorsed on cover: N. Illinois C. C. U. S. No. 662. The Connecticut Mutual Life Insurance Company, Appellant, *vs.* Anna C. Cushman, The South Side Homestead Association of the City of Chicago *et al.* Filed October 10, 1881.

108-51

OFFICE SUPREME COURT U. S.
JAN 19 1883

Supreme Court of the United States,

OCTOBER TERM, A. D. 1882.

The Connecticut Mutual Life Insurance Company, *Appellant,*

vs.

Anna C. Cushman,
The South Side Homestead Association,
Robert D. Fowler, et al.,
Appellees.

Appeal from the Circuit Court for the Northern District of Illinois.

ARGUMENT OF EDWARD S. ISHAM,

OF COUNSEL FOR APPELLANT.

ISHAM, LINCOLN, BURRY & RYERSON,
Solicitors.

C. BECKWITH,
EDWARD S. ISHAM,
of Counsel.

Supreme Court of the United States,

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Appellant,

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ARGUMENT.

The question sought to be presented is whether a redemption was effectively made by the proceedings shown in this record from the master's sale in foreclosure.

The parties in interest on that issue are the appellant, mortgagee and purchaser at the master's sale, and still a creditor of the mortgagor, and one ROBERT D. FOWLER. FOWLER is a stranger to the original cause, and was never a creditor of the mortgagor; but for the purpose of speculating in this redemption, he became purchaser of a judgment *entered by confession* against the grantee of the mortgagor *after* that grantee's year for redemption had expired, and when he, therefore, *had no interest remaining* in the land. *Dunn* v. *Rodgers*, 43 Ill., 263. This judgment, of course, was never a *lien* on the land, the judgment debtor having no interest therein; and no "*equity* of redemption" ever existed in favor of such a judgment. The equity to redeem attended not the judgment, but its interest in the land; the substitution to that extent of the creditor for the mortgagor; Story Eq. Jur., § 1023; Adams Equity, *130; *Stonehewer* v. *Thompson*, 2 Atk., 440; *Mildred* v. *Austin*, 8 Eq., 220; *Grant* v. *Duane*, 9 John., *612; *Ewing* v. *Ainsworth*, 53 Ill., 464; 2 Jones on Mtges., § 1069; and no right to redeem exists in favor of FOWLER, except as it is given by a construction yielded by the courts to the letter of the statute. *Phillips* v. *Demoss*, 14 Ill., 414.

The material facts are as follows: On January 29, 1870, WILLIAM H. W. CUSHMAN and ANNA C., his wife, executed to the CONNECTICUT MUTUAL LIFE INSURANCE COMPANY a mortgage of the N. ½ of N. W. ¼, Sec. 9, T. 38 N., R. 14 E., to secure $75,000, with interest at nine per cent.

On November 13, 1876, WILLIAM H. W. CUSHMAN conveyed to WILLIAM H. CUSHMAN the said N. ½ of N. W. ¼, etc., excepting certain small portions that had been theretofore conveyed to other parties.

After the making of said mortgage, said premises were subdivided into eight hundred lots, numbered consecutively from one to eight hundred, inclusive, with streets and alleys, and by a plat of said subdivision filed of record it was called "The South Side Homestead Association "Addition to Chicago."

On December 12, 1877, the CONNECTICUT MUTUAL LIFE INSURANCE COMPANY filed in the United States circuit court in and for the northern district of Illinois, its bill to foreclose the above mortgage, making WILLIAM H. W. CUSHMAN and wife, WILLIAM H. CUSHMAN and wife, and others, parties defendant. WILLIAM H. W. subsequently died, and WILLIAM H. CUSHMAN absconded.

A decree was entered in said cause on July 14, 1879, which finds the sum of $110,278.50 to be a valid and first lien upon the said premises, and orders the sale of the same, or as much as may be necessary to satisfy said sum, together with interest thereon, by HENRY W. BISHOP, master in chancery of said court, said land to be sold in a certain order set out in said decree.

The master's report of sale filed August 23, 1879, shows that on August 15, 1879, he offered for sale, in

lots separately, all of the lots in a subdivision which had been made of said premises referred to in said decree, called the "South Side Homestead Association Addition," (excepting lots 1, 2, 3, 9, 10, 11, 395, 396, 397, 398, and 784), and then and there struck off and sold the same separately in the order and for the various amounts mentioned and set forth in a schedule attached to said report marked "A"; the whole having been sold to the said CONNECTICUT MUTUAL LIFE INSURANCE COMPANY for the total sum of $110,288; and also reports the sale of said excepted lots in the order prescribed by the decree.

On October 10, 1879, an order was entered by the circuit court below confirming said report, and decreeing that the defendants and all claiming under them since the commencement of the suit, be barred and foreclosed of all equity of redemption in and to said premises and every part thereof that shall not be redeemed according to law.

The law of the state of Illinois, in force when the mortgage thus foreclosed was made, and relating to redemption from sales under decrees in foreclosure, was as follows:

Extract from Revised Statutes of Illinois, 1845, pages 302–305, title, "Judgments and Executions."

SEC. 12. Whenever any lands or tenements shall be sold by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing a deed for the premises sold, to give to the purchaser or purchasers of such lands or tenements a certificate in writing describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed, as is pro-

vided in this chapter, and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate, signed by him; and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

SEC. 13. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold, by virtue of any execution, within twelve months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or to the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per centum from the time of such sale, and on such sum being made as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

SEC. 14. After the expiration of twelve months, and at any time before the expiration of fifteen months, from the sale of any lands or tenements under the provisions of the preceding sections hereof, it shall be lawful for any judgment creditor to redeem the same *in the manner following:* Such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer to execute the same, and thereupon said officer shall indorse upon the back of said execution a levy upon the land or tenements which said judgment creditor may wish to redeem; and said judgment creditor *shall pay to said officer into whose hands he shall have placed his execution* as aforesaid, the amount of money for which said premises may have been sold, *with ten per centum per annum interest thereon*, from the date of such sale for the use of the purchaser thereof, his executors, administrators or assigns, *upon payment of which*, said *officer shall file* in the recorder's office of the county in which said lands are situated, *a certificate* of the redemption thereof by said judgment creditor under said execution, *and shall advertise and offer the same for sale under and by virtue of said execution*, in the same manner that other

lands are required to be advertised and exposed to sale on execution in other cases.

SEC. 15. Any judgment creditor, *having so redeemed* such lands, shall be considered as *having bid at such sale* the amount of said redemption money so paid by him, and interest thereon from the date of such redemption to the day of sale; and if no bid greater than said amount shall be offered, the lands shall be struck off and sold to such judgment creditor or creditors, and a deed thereof shall forthwith be executed by such officer to such creditor or creditors, and no other redemption shall be allowed; but if another and higher bid shall be made therefor, and the said lands sold for more than the amount of said redemption money and interest as last aforesaid, the excess over and above the amount of the same shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of purchase shall be executed to the new purchaser in the manner hereinbefore prescribed, for a deed of said land so sold within sixty days from the date of such sale, unless the same shall be redeemed in the meantime *in the manner herein prescribed* by some other judgment creditor; and if said lands shall be redeemed from said second parchaser, the same shall be done in the same manner and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale as is hereinbefore required in case of the first redemption; and such lands may be successively redeemed within every period of sixty days, so long as there shall be a judgment creditor disposed to redeem the same, on the terms and *in the manner aforesaid;* and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall have been last redeemed, or his successor in office, to execute a deed for the lands so sold to the last purchaser, in like manner as other deeds for lands sold on execution are made.

SEC. 16. Any judgment creditor or creditors may redeem the whole or any part or portion of the lands or tenements previously sold upon execution: *Provided*, such redemption shall be made in the like distinct quantities or parcels in which the same were sold.

SEC. 17. No commission upon the amount of the redemption money paid in any case shall be allowed to the officer receiving the same, but the usual commission shall be allowed the officer selling said premises on the excess made over and above the amount of said redemption money and interest; the duplicate copy of the certificate of purchase required in the twelfth section hereof, shall be filed in the office of the recorder of the county in which the lands so sold under execution shall be situated.

SEC. 22. If such lands or tenements so sold, shall not be redeemed as aforesaid, either by the defendant or by such creditor as aforesaid, within fifteen months from the time of such sale, it shall be the duty of the sheriff or other officer, who sold the same, or his successor in office, or his executors or administrators, to complete such sale, by executing a deed to the purchaser; and if any creditor shall redeem such lands or tenements as aforesaid, it shall be the duty of the sheriff, or other officer, on the expiration of fifteen months from the time of such sale, to execute a deed to such creditor as the original purchaser; and such deeds shall be as valid and effectual in law, as if such creditor had been the original purchaser.

SEC. 24. In all cases hereafter, where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagors of such lands, his heirs, executors, administrators or grantors to redeem the same in the manner prescribed in this chapter, for the redemption of lands sold by virtue of executions issued upon judgments at common law, and judgment creditors may redeem lands sold under any such decree *in the same manner as is prescribed* for the redemption of lands, in like manner sold upon executions issued upon judgments at common law.

These sections of the statute, being the law in force when the mortgage was made, are shown in the printed record at page 129, as exhibit "D."

When, in the *Brine* case, 96 U. S., 627, this court held that this statute must govern foreclosure proceedings in the

federal courts as well as those in courts of the state, the circuit court below formulated a series of *rules* to regulate the proceedings therein in redemption from sales under decrees in chancery. Those rules were established by an order entered in the circuit court of the United States on the 11th day of July, A. D. 1878; and they are shown at length in the printed record, at page 126, as exhibit "B."

The master's sale having been made August 15, 1879, the year within which CUSHMAN, holding the equity of redemption, might redeem under the statute from the sale, expired August 15, 1880; but no redemption was made within that time by said WILLIAM H. CUSHMAN or by any other defendant.

On the 15th November, 1880, the additional three months given to judgment creditors for redemption from this sale expired. On the *third* day of November, two months after the extinction of CUSHMAN's interest in the land and twelve days before the expiration of *all* right to redeem, one HENRY S. MONROE entered judgment by confession on a warrant of attorney against WILLIAM H. CUSHMAN for $10,150. On the 9th day of November he placed an execution in the hands of the marshal, and thereupon the marshal endorsed on said execution a *levy on that date* on a portion of the lots of land which had been sold to the CONNECTICUT MUTUAL LIFE INSURANCE COMPANY at said master's sale, which lots *so levied upon* are described as follows:

Lots numbered 167 to 174 inclusive, 192 to 210 inclusive, 225 to 235 inclusive, 562 to 572 inclusive, 587 to 608 inclusive, 623 to 633 inclusive, 1 to 99 inclusive, 300 to 497 inclusive, and 698 to 800 incluslve; all in the South Side Homestead Association Addition, a subdivision of the N. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$, aforesaid. The aggre-

gate of these is 482 lots on which a levy was made November 9, 1880. *Rec.*, p. 124.

On the next day, November 10, the said MONROE deposited *with the clerk* of the circuit court of the United States for the northern district of Illinois, the sum of $12,741.95, which deposit is shown by the entries on the books of said clerk as follows:

Deposited for redemption of said lots number 167 to 174, inclusive; 225 to 235, inclusive; 192 to 210, inclusive; 562 to 572, inclusive; 587 to 608, inclusive; and 623 to 633, inclusive	$12,614 80
For clerk's fees, a percentage of one per cent.	126 15
For certificate of redemption	1 00
Making a total of	$12,741 95

The said lots for the redemption of which money was so deposited with the clerk are 82 lots out of the total of 482 lots on which levy had been previously endorsed by the marshal on his said execution. Thereupon the *clerk* issued a certificate of redemption of the last mentioned lots, which was filed for record on the 11th November, 1880. *Record*, p. 96.

On the 15th November, 1880, the last day of the fifteen months, ROBERT D. FOWLER bought of MONROE an assignment of his judgment against Cushman, and of his interest in the levy and redemption that had been made; and on that day FOWLER deposited *with the clerk* the further sum of $62,037.01; the said sum being represented by the entries on the books of said clerk to have been deposited by FOWLER for the redemption from said sale of the following lots in said subdivision: Lots number 15

to 29, inclusive; 31 to 99, inclusive; 300 to 387, inclusive; 392 to 394, inclusive; 399 to 497, inclusive; 698 to 783, inclusive, and 785 to 800, inclusive; being 376 other lots out of the 482 lots upon which the marshal had endorsed a levy upon his execution.

The lots specified in the clerk's entries for the redemption of which money had been deposited with him either by MONROE or by FOWLER, are in number 458, out of a total of 482 upon which the marshal had endorsed a levy, leaving out of the lots so levied on, twenty-four lots for the redemption of which no money has been deposited as aforesaid, which said lots are numbers 1 to 14, inclusive; 30; 388 to 391, inclusive; 395 to 398, inclusive; and 784.

The total amount deposited by FOWLER appears by the entries on the books of said clerk to have been made up as follows:

Amount deposited for redemption of lots last above mentioned, as sought to be redeemed	$61,421 80
For clerk's fees	614 21
For certificate of redemption	1 00
Making a total of	$62,037 01

Thereupon *the clerk* issued a *certificate of redemption of said lots*, which was filed for record on the 16th November, 1880. *Record*, p. 97.

On November 16th, the marshal advertised all the lots levied upon by him under the MONROE judgment and execution for sale on the 8th day of December, 1880. The advertisement recites that the sale will be made under a levy of the 16th day of November. *Record*, p. 120.

No levy appears on said execution, as made on the 16th day of November, A. D. 1880, and no such levy was ever made. The only levy appearing on said execution is the one endorsed thereon as made on the 9th day of November, A. D. 1880. No advertisement or sale appears to have been ever made under that levy actually endorsed.

On the 8th day of December, A. D. 1880, the marshal offered said lots for sale, and ROBERT D. FOWLER bid for them an amount of money equal to that which had been deposited with the clerk, computing interest at eight per centum to the sale, and thereupon the marshal professed to make sale thereof to FOWLER for that amount of money, but *no moneys whatever were received by the marshal, unless his costs, and no money was paid* by FOWLER or by MONROE *in redemption from said mortgage sale to said marshal*, and no other moneys have been paid for the purposes of said redemption by FOWLER or MONROE, except the moneys deposited with the clerk; and upon payment of said money to the clerk, he, assuming to act under the authority of the rules, paid the said money into the registry of the court, and deposited it in the sub-treasury of the United States, whence it can only be withdrawn under an order to be procured from the court.

After the entry of the rules by the court below, and on the 31st day of May, 1879, the legislature of Illinois passed an act to take effect July 1, 1879, changing the redemption law as to the rate to be paid, on the master's certificates of sale, for the period of fifteen months given for redemption. The new law fixed that rate of interest at *eight* instead of ten per cent. per annum, and a copy of it is shown in the printed *Record*, p. 128, as Exhibit "C."

FOWLER and MONROE deposited for redemption the amount bid at the master's sale, with eight per cent. interest

only. The record shows (pp. 123 and 131 Ex. "F") that FOWLER professes to have afterwards *tendered to the complainant*, on July 20, 1881, more than *eight months after the right of redemption expired*, the sum of $6,282, in addition to the amount deposited with the clerk. The money was never paid to the clerk, nor was it ever in the marshal's hands as a *bid at his sale*.

The foregoing, as we believe, are all the material facts upon which the issues now submitted arise; and in view of them the court below *erred* in holding said redemption to be lawful and effective, and in refusing to the appellant, holding the certificate of purchase at the master's sale, the rule on the master to make a deed in pursuance of his certificate.

I.

The respondent, FOWLER, has no claim to have the terms of the statute enlarged in his favor by a court of equity or any other.

Primarily the statute is one dealing with, and passed for the purpose of regulating, the existing work of the court of equity. In that court the equity of redemption from the mortgage grew up in the teeth of the terms of the mortgage and of the common law. The statute recognizing this established equity, added to it, upon specified conditions, the same *legal right* to redeem, not *from the mortgage* merely, but from the *sale under foreclosure decree*, which other statutes already gave to redeem from sales under executions at law. See § 24, R. S. 1845, p. 8, *ante*. This is an enlargement of the privileges given by equity. It is a new and strictly a statutory and *legal* right, and a new aggression upon the letter of the mort-

gage; and it is given to one to whom, having no lien, equity gave no redemption at all. What sensible claim has he to an enlargement of the statute by relaxation of its conditions by a court of equity? The statute is the *source* of the right, and the right is not given apart from its conditions.

We shall find the rule, that in giving effect to special rights given by state statutes, the terms of the statute are the measure of the jurisdiction of the federal courts; and that the condition annexed by this statute cannot be dispensed with, either by authority of a court of equity or by contract of the parties. Neglect of the condition makes the proceeding void.

That the procedure in this case does not conform to the requirements of the statute is conceded. The principal divergence is in this, that by the statute payment of the redemption money *to the officer having the writ* to execute, to be *in his hands a bid* at his execution sale, is *a condition precedent* to any *power* of the officer to *issue any certificate* of redemption, or to *offer* the land *for sale under his execution, for the redemption money;* whereas the rules of court prevent altogether this payment to the officer armed with the writ.

Bearing in mind that apart from the statute, no right exists to redeem from a foreclosure *sale* at all (*Fischer* v. *Eslaman*, 68 Ill., 80), the 14th section of the statute is merely "that it shall be *lawful*" for a judgment creditor to redeem "*in the manner following*." He shall sue out execution on his judgment and place it "in the hands of the *proper* "*officer to execute* the same"; and the redemption money he "*shall pay to said officer* into whose hands he shall have "placed his execution," for the use of the certificate holder, "*upon payment of which* said *officer* shall issue a certificate

" of redemption of the land," and shall "*advertise and offer* "*the same for sale under and by virtue of said execution*"; and, by the 15th section, at that sale the amount of the *redemption money so paid to the officer* shall be *considered a bid at his sale by the judgment creditor* so redeeming.

By the rules of the federal court below, the judgment creditor is *not permitted* to pay the redemption money to the officer having the execution, whether marshal or sheriff, but is *required* to pay it to the *holder of the master's certificate* or to the *clerk of the federal court;* and the clerk must deposit it in the sub-treasury, and the clerk. not the officer holding the writ, must issue the certificate of redemption; and thereupon the officer holding the writ of execution is ordered to proceed to sell the land under it for this redemption money in the hands of the clerk or of the certificate holder.

To elude the objection that the conditions of the statute and of the right are overturned here, the question is made whether the differences are in matters of substance and of legal right, or are in matters of mere form, which the courts of the United States may disregard and dispense with. We have the benefit here of the statement of the learned judge of the court below, of the view which governed him in framing the rule.* He states that he considered the substance of the statute to be the right to redeem, and that if that was upheld all the rest might be treated as matter of form and accessory. We agree that it is a well settled principle that whenever a *general right* is given by special statute of a state, the courts of the United States will give effect to it, and in matters of *mere* form and of procedure, will pursue their own.

Railway Co. v. *Whitton*, 13 Wall., 286.

* See reply of the respondent to the petition in *ex parte* Connecticut Mut. Life Ins. Co. Oct. Term, 1880.

But it will not be denied that a statute *may* be so framed as to make compliance with preliminary methods a condition of the right. It must always be necessary, therefore, to inspect a statute carefully to see what the *right* is which it actually confers. It may not give a "*general right*" disassociated altogether from conditions. But under this idea of giving effect to a general right, it was considered below that the proceeding *prescribed by this statute*, and which is in *terms a condition of the right* may be put aside as a mere form in the federal court; and we are brought to the anomalous result that a *judgment creditor* has a right given him in the federal court which the state court denies him, and which the state court *adjudges, does not exist under the statute.* It would seem that the principle invoked must be misapplied.

We have to consider, therefore, whether this statute does give a "*general right*" unconditioned in substance; whether the condition that in case of redemption by a judgment creditor the money shall be paid to the officer having sale to make under his execution, so as to be in his hands a bid at that sale, is mere matter of form or is of the substance of the right. Whether this element is form or substance under this statute, is for the supreme court of the state to determine. The statute construed by that court is the *law of the state* upon this right of redemption. That which is *made substance* and of the essence of the right by the *law of the state*, cannot be *made formal* and immaterial by *rules of court.* Let us see, therefore, what is form and what is substance by the law of the state.

1. We have already observed the terms of the statute creating the right to redeem from the sale. They are simply that "it shall be *lawful*" for a judgment creditor

to redeem "*in the manner following.*" Apart from these words making a procedure in a given manner "*lawful,*" the *right* spoken of does *not exist at all.* It is plain, therefore, that by the words of the statute, the manner is the condition and the measure of the right.

2. We may look at the peculiar method of payment, which is provided for the case of a judgment creditor, in its relation to a sale and alienation of the title to land.

This scheme for redemption by a judgment creditor, involves a sale of the land under execution on his judgment. There must of necessity be a sale, for it is *the only method by which the creditor can make his judgment available.* If the mortgagor or his grantee is the party redeeming, there is no need of sale, and he may simply pay the redemption money to the holder of the master's certificate, or to some proper person for him, and *having thus removed the incumbrance*, the title will remain clear in him.

But if a *judgment creditor* pays money in the same way *it will not transfer the title to him*, and it will avail him nothing. It will, if accepted by the certificate holder, simply clear off the title for the benefit of the mortgagor, his heirs or grantees. *Borders* v. *Murphy*, 78 Ill., 86; *Turney* v. *Young*, 22 Ill., 255. There must be a sale, because there must be *an alienation of a title to the land.* There must be a sale on behalf the judgment creditor, *under his execution* at which he can add his redemption money to his judgment debt as a part of the price, and obtain either the title to the land or payment of his debt from the money bid by some other person, who does get the title through his sale. After the mortgagor's year has expired the certificate holder owns the title subject to the statutory right to *divest it* by this redemption. For this there must be a sale under the execution at which the

redemption money *must* be bid, and at which the judgment debt also *may* be bid. The *judgment creditor's right of redemption is merely the right to this sale;* and we are, therefore, thrown back to an inquiry into the terms and *conditions upon which the statute authorizes this sale* to be made, and upon which it *empowers an alienation of the title to the land* by the officer holding the creditor's execution. The *power of the officer* is the measure of the creditor's right. The statute requires the money to be paid to the officer having the execution *as a part of his process of sale under that execution.* It is in his hands a *bid in advance* at that sale *and proceeds* of that sale. In the nature of the case the moneys belong in his hands and not elsewhere.

3. This whole subject of the construction and legal effect of this statute, both as to the *power* under it of the officer holding the execution, and as to the effect of placing the money elsewhere, has been considered and adjudicated upon by the supreme court of the state.

The case of *Littler* v. *The People* ex rel. *Hargadine*, 43 Ill., 188, was in nearly all respects like this at bar. There the master in chancery had made his certificate of sale in a foreclosure cause. A judgment creditor at the proper time attempted proceedings for redemption, and gave execution to the sheriff, but paid the money to the master. The holder of the certificate claiming that no redemption had been made, and that the time for exercising that right had passed, insisted upon his deed from the master, and filed in the circuit court a petition for mandamus to compel the master to make the deed. The defect alleged in the redemption was that *the money was not paid into the hands of the sheriff*, and the question presented was whether the actual transaction was a compliance with the statute. The circuit court awarded a

peremptory mandamus, and appeal was taken to the supreme court of the state. That court, affirming the judgment below, said:

"The only question arising on this record is as to the regularity and legality of the redemption of the land sold under the decree in chancery by a master in chancery. The offer to redeem was by a judgment creditor, and made after the expiration of twelve months, and within fifteen months from the sale by the master.

"This right of redemption is statutory, and must be exercised in pursuance of the statute, otherwise it will be ineffective. . . .

"It is contended by appellant, that it is the policy of the law to favor redemptions, and courts will look to the substance rather than to the form. . . .

"The case of *Robertson* v. *Dennis* merely reiterates the doctrine in Elkin's case, and though, as said in Robertson's case, the statute is remedial in its character, and must be construed liberally, so as to advance the remedy, it does not intimate that, in order to that, its plain provisions must be disregarded.

"But the appellant says, even if the law be that the redemption could only be made by the payment of the money to the sheriff, here the deputy sheriff told the judgment creditor, that the master was the proper person to receive the redemption money, and thereupon he paid it to the master, and the sheriff immediately *ratified the act by levying and proceeding to sell, as in the case of redemption. The law knows of no such proceeding.* The sheriff was in no position, *nor had he any authority, to ratify the unauthorized act of either* of these persons. He was the only person competent, under the law, to receive the money, as *otherwise he could not recognize it as a bid.* He becomes a bidder for the land to the *amount he has paid to the sheriff, in whose hands the execution is, and the land must be exposed to sale with this bid upon it,* and if any one advances on the bid he becomes a purchaser.

"Appellant's counsel contend, that the payment of the redemption money to the master, who made the sale, or to any officer of the law who, by his official bond, is bound for it, is always good payment.

"This is true, as the cases cited show, *when the person redeeming is the judgment debtor*. It is right and just, on paying his debt, his land should be restored to him; but not so with a judgment creditor, seeking to get satisfaction for his debt. *He is entitled only to become a competitor with others for the purchase* of the land, and *then* ONLY ON THE CONDITION, THAT HE PLACES HIS BID IN THE HANDS OF THE OFFICER WHO HAS CHARGE OF THE EXECUTION, AND IN ADVANCE OF ALL OTHERS. *These are the terms* ON WHICH THE LAW GIVES HIM THE PRIVILEGE. *He cannot be a bidder*, the execution being in the hands of the sheriff, and *the amount of the bid in the hands of a stranger to the proceeding, nor could the sheriff*, as he did not in this case, *indorse upon the execution a levy* upon this land, which the judgment creditor wished to redeem; *nor did he file in the recorder's office* of the county *a certificate of the redemption* thereof by the judgment creditor under his execution; *all which the statute requires, but which the sheriff was incapable of doing for the reason that the money was not paid to him.* The judgment creditor *was in no sense in the position the statute requires him to be.*

"As this court said in the case of *Stone* v. *Gardner*, 20 Ill., 309, which was a case where the *judgment debtor* attempted to redeem *by depositing the money with the clerk of the court* out of which the execution issued, THAT OFFICER WAS NOT THE PROPER PERSON *with whom to deposit money for such purpose.* The redemption money could be paid to the deputy sheriff, or to the administrator of a sheriff if he was dead; or, it might be paid to the purchaser himself, clearly recognizing any serious departure from the statute, remedial as it may be, fatal to the redemption. *In this case the judgment creditor might* WITH AS MUCH PROPRIETY *have paid the money to the* CLERK OF THE COURT. It would have been to the same extent, a bid in his hands, as in the hands of the master."

It will be observed that the court *employed the exact thing that has been done in this case*, deposit with the *clerk* as a pointed and conspicuous illustration of a fatal failure to conform in matter of *substance* to the statute, and of a case in which the *statute* gives no *right* of redemption at all.

The court further say:

"On the facts agreed, we are of opinion the judgment creditor Evans, *did not comply with the statute* by paying the redemption money to the master in chancery who made the sale, the law requiring it to be paid to the sheriff in whose hands the execution is placed, and is there as a bid on the land. It is but right and just, that a party seeking to acquire rights under this statute, should take care to comply *substantially* with all its requirements. There is no hardship in this, nor is there safety without it. The circuit court decided correctly in awarding a peremptory mandamus to the master to make a deed for the land to the relator, and the judgment must be affirmed."

The case of *Stone* v. *Gardner* 20 Ill., 309, cited *supra* by the court, was to the same effect. In that case the sale of the land had been made under an execution issued on judgment at law, and the redemption was offered by the judgment debtor himself, corresponding to the mortgagor in a foreclosure sale. He offered to redeem, but *paid the money*, not to the persons directed by the statute, but to the *clerk of the court*. Then after his year had expired he confessed a judgment as in this case, and procured the aid of the judgment creditor to redeem for him. But this creditor, while he paid the money to the sheriff, the proper party, neglected to lodge his execution with it. Then, after the fifteen months had expired, he offered to pay to the certificate holder the money that redemption would have required, and *filed a bill in chancery* in the circuit court *for relief, and to prevent a deed to the holder of the certificate.* That court *taking apparently the same views entertained by the court below*, that the right of a judgment creditor to redeem was an independent and a substantial right, of which the identical forms and methods, required by the statute and in question here, *were not a*

part, and to which they were not essential, *allowed the prayer of the bill;* and upon tender of the redemption money set aside the sale, and annulled the certificate in the hands of the holder. On appeal to the supreme court that decree was reversed, on the ground that by the statute no *right to redeem existed* except through the *very methods* prescribed, and they had been disregarded; that no equities existed outside the statute upon which those methods could be separated from the right, and that such, under this statute, is the *law of the state* upon this subject. The supreme court said:

"This case presents a series of blunders, of which the defendant here, Gardner, must be the victim. . . .

"He knew of the sale by the sheriff, and of the amount necessary to redeem, and the day on which his right to redeem expired. Yet he does nothing but fold his arms in unconcern, and suffer the day to elapse, and not until January 26, 1857, some three weeks or more after the time had expired, does he consider it necessary to move in the matter.

"On that day he deposits with the clerk of the circuit court an amount large enough to redeem the land; but the day of grace had passed, and *the clerk had, at no time, any right to receive the money; so he can take nothing, by that motion.*

"This money being refused by the purchasers or their agent, Olney, on the 24th day of February following, Gardner received it back, he having on the 21st of February confessed a judgment in favor of one Gilbert for $404.66, to make him a judgment creditor so that he might redeem. On the 24th April, Gilbert paid to the then sheriff, Tisdell (the sheriff, Wilson, who made the sale having died), the amount of the judgment, interest and costs, for which the land was sold, and on the 5th of May following received it back again. On paying this amount to the sheriff to redeem, *he did not, as the statute requires, deliver at the same time to the sheriff an execution on his judgment* (R. L. 1845, Chap. 57, Sec. 14), *and of*

course gained nothing by that proceeding. On that day Gardner filed his bill of complaint and obtained a decree in his favor, to the effect that on paying the purchase money, with ten per cent. and costs, the purchaser should re-convey to him.

"We are at a loss to find a single hook on which to hang this case. *We do not know of any power existing in a court of equity to dispense with the plain requirements of a statute;* it has been always disclaimed, and the real or supposed hardship of no case can justify a court in so doing. When a statute has prescribed a plain rule, free from doubt and ambiguity, it is as well usurpation in a court of equity as in a court of law to adjudge against it; and *for a court of equity to relieve against its provisions, is the same as to repeal it.* Fonblanque Eq., Book 1, Chap. 1, Sec. 3.

"If the sheriff who sold the land was dead, what did it matter to the judgment *debtor?* He knew, or should have known, *he* could pay the money to his administrator; or, as has been held in the case of *McClusky* v. *McNeely*, 3 Gilm., R., 579, to his deputy, and certainly to the purchaser. R. L. 1845, Chap. 57, Sec. 13. He did not choose to do either, but was content to deposit the amount, in currency, WITH THE CLERK, WHOSE RIGHT TO RECEIVE IT WAS NO BETTER THAN THAT OF THE TOWN CONSTABLE. This right to redeem is a statutory privilege, and its behests must be obeyed.

"From beginning to end, the complainant seems to have been doomed to blunders, until, from their repetition, he has lost a valuable property.

"On full consideration of all the allegations and proofs in this cause, we are of opinion that the bill contains no equity upon which to base the relief decreed, and that the decree is unwarranted by the facts, and unsupported on correct equitable principles. The decree is therefore reversed and the bill dismissed."

In that case, in which the action of the court of chancery was reversed, the court say the clerk had no more right to receive or hold that money than the *town constable*, and in *Littler* v. *The People*, that the master had

no more power to receive it than the *clerk;* there being in either case, in fact, *no bid* at the redemption sale by reason of the money "*being in the hands of a stranger to the pro-*" *ceeding*." By those illustrations the court points the hopeless character of the departure in this case, and in the rules of the court below, from the right given by the law of the state.

This law of the state is settled by repeated decisions, all without qualification, and covering the whole history of the statute. The statute is the source of the right; its terms are the measure of the right; apart from the condition, no right is given to any one; a redemption sale not in compliance with the statutory method is without the statutory authority, and is *void*, and may be attacked collaterally.

Littler v. *The People*, 43 Ill., 194.
Durley v. *Davis*, 69 Ill., 134.
Clingman v. *Hopkie*, 78 Ill., 156.

We are exactly in the position of the petitioner in *Littler* v. *The People*, 43 Ill., 188. There a judgment creditor at proper time attempted proceedings for redemption. He placed his execution in the hands of the proper officer, but placed the money, which ought to be a bid at that officer's sale under the execution, in the hands of a stranger, the master in chancery who had made the sale. The holder of the certificate claimed, as we do here, that the proceeding was *void for that reason*, and he stood on his *legal right*, and demanded his deed, as we have done here, of the master; and the supreme court compelled the master by *mandamus* to make that deed, notwithstanding the pretended redemption. And this case on this very subject is re-affirmed in *Durley* v. *Davis*, 69 Ill., 134.

The law of the state, therefore, is that the lodging of

the redemption money, by the redeeming judgment creditor, in the hands of the officer holding his execution is a requirement, apart from which the statute gives no right to redeem. And the reason is that this money is made *in the hands of the officer an inseparable part of his execution of the writ.* It is an advance bid at his sale, and in his hands is part of the proceeds of the sale. The judgment creditor is at that sale, "entitled only to become a "competitor with others for the purchase of the land, and "then *only on the condition that he places his bid in the* "*hands of the officer who has charge of the execution*, and "in advance of all others. These are the *terms on which* "*the law gives* him the privilege"

Littler v. *The People*, p. 20 *ante.*

On this basis the supreme court has expressly decided every form and phase of the question which is presented here. It has held expressly:

That this condition to lodge the money with the officer is of the substance of the right, and not a mere form. That the judgment creditor is not given a general right to redeem.

That apart from conformity to this requirement, no right is given by the statute. The court below gives by its *rules* a right which the statute and the courts of the state do not.

That without this conformity the sale under the execution for purposes of redemption is *void.*

That departure cannot be authorized nor the consequence avoided by the *consent of the parties;* nor by any consent or *ratification of* the *officer;* nor by "any power existing in a court of equity." *Stone* v. *Gardner*, p. 23 *ante.*

That possession of the redemption money in his own hands is a *condition precedent* to any *power of the officer* to *treat it as a bid* at his sale; or to sell under the execution for redemption, or to make or issue any certificate of redemption, or to make a deed to a purchaser for the redemption money. Without this possession these acts by him are *void*.

This law of the state is necessarily obligatory in the courts of the United States. This is well settled upon various considerations.

First. This law of the state is the *only law* which the federal courts sitting in Illinois have to administer upon this subject. There are no statutes or laws of the United States relating to it. If any principles of common law may be involved, still the common law prevails in those courts only *because* and *so far as* it is the law of Illinois. But this right is purely the creation of the state statute, and it is settled jurisprudence of this court that in such cases of statutory rights the terms of the statute are the measure of the jurisdiction of the federal courts. *Canal Co.* v. *Gordon*, 6 Wall., 568.

Second. The mode of redemption provided by the law of the state for a *judgment creditor* is special. It involves a *sale of the land* by the sheriff or marshal holding an execution. He derives power, under this statute, to sell the land under that execution to make the *amount of the redemption money* payable to the holder of the certificate, as well as the amount of the judgment on which the execution is issued. The redeeming creditor is entitled simply to be a competitor at that sale. The time of redemption of the mortgagor having elapsed, the holder

of the certificate is the owner of the land, subject only to the right of a judgment creditor to have his right divested by *a sale and conveyance of the land* within the time and in the method provided for the officer by the statute. The principle which governs in that situation is precisely that which was declared by this court in *Brine* v. *Ins. Co.*, 96 U. S., 627:

"We will close these citations by using the language which had the unanimous assent of the court in the recent case of *McGoon* v. *Scales*, (9 Wall. 23): It is a principle too firmly established to admit of dispute at this day, that *to the law of the state* in which land is situated must we look for the *rules which govern its descent, alienation and transfer, and for the effect and construction of conveyances.*

"The decree in this case, the sale made under it and the deed made on that sale, will constitute a transfer of the title within the meaning of the principle thus laid down. Neither the purchaser at that sale, nor any one holding under him, can show title in any other way than through the judicial proceedings in this suit. *These proceedings are a necessary part of the transfer of title.* The legislature of Illinois has prescribed as an essential element of the transfer by the courts in foreclosure suits, that there shall remain to the mortgagor the right of redemption for twelve months, and to judgment creditors a similar right for fifteen months, after the sale, before the right of the purchaser to the title becomes vested. This right, *as a condition on which the title passes*, is as obligatory on the federal courts as on the state courts, because in both cases it is made a rule of property by the legislature, which had the power to prescribe such a rule."

This language may be carried directly into the case in hand. In the present case, the *delivery of execution* on the judgment *to the proper officer* to execute it; the *payment to him* of the redemption money to be in his hands a first bid at his sale; *the advertisement* and *the sale* by the officer, together with his deed, "*will constitute a transfer of the title*" to the purchaser at that sale. "Neither the purchaser at

"that sale, nor any one holding under him, can show title "in any other way than through" these proceedings. "To "the law of the state in which land is situated must we "look for the rules which govern its . . . . alienation "and transfer, and for the effect and construction of con- "veyances." By the law of the state where this land lies the *delivery of the execution* to the officer, and the *payment to him* are *conditions precedent* to his *power to sell;* they are inherent and essential elements in any *alienation and transfer* of the title by him; without them his *deed of conveyance* is ineffective and void; and no court of law or equity has power to dispense with these elements in the transfer of the title. They are declared by the supreme court to be material and essential conditions of the statute, and of the power of the officer to transfer any title.

This attempted sale, therefore, by the marshal in this case is void in this court as well as in the state court, upon the principle governing in *Brine* v. *The Ins. Co.* No law of the state authorizes an alienation of title by such proceedings as he conducted. His deed to Fowler is, therefore *void*, and the appellant is entitled to the master's deed, as was held in *Littler* v. *The People*, *supra*. The whole proceeding was in plain violation of the law of the state, both as declared by the terms of the statute and by the emphatic rulings of the supreme court, which have never varied. Neither the right asserted by Fowler, nor the power of sale and alienation of title attempted to be exercised by the marshal, are given by law.

II.

Another consideration is fatal to the redemption asserted in this case. The proceeding is equally void upon the principle laid down in *Bronson* v. *Kinzie*, 1 How., 311, *Edwards* v. *Kearzey*, 96 U. S., 601, and the whole series of cases to the same effect in this court. The principle of these cases is that "no state shall pass any law impairing "the obligation of contracts," and that "it is the settled "doctrine of this court that the laws which subsist at the "time and place of making a contract, enter into and "form a part of it, as if they were expressly referred to "or incorporated in its terms. *This rule embraces* alike "those which *affect its validity, construction, discharge,* "and *enforcement.*" *Von Hoffman* v. *City of Quincy*, *supra; McCracken* v. *Hayward*, 2 How., 608.

It is conceded that the amount paid to the *clerk* was by a large sum *less* than the amount required for redemption by the law of the state in force when *the mortgage was made*, and equally by the rules of the court below. That law required payment, to the officer holding the execution for another sale, of the amount of money for which the premises had been sold, "*with ten per centum per annum* "*interest thereon from the date of such sale;*" and the rules of the court, in this respect, followed the statute. The amount actually deposited was considerably less, and made so by computing the interest on the amount of the sale at *eight per centum* instead of *ten*. This change was made because an amendatory act of the legislature, *passed long after this mortgage was made and after the bill of foreclosure in this case was filed*, reduced the rate of interest to eight per cent.

It is said that this statute is one relating only to the remedy on this contract of mortgage, and that the interest on the money may be changed. This is the same old subject that has been so often passed upon with greatest emphasis of language by this court. The rule "embraces alike" all laws which affect a contract in its "validity *dis-*"*charge and enforcement.*" It is "the settled doctrine of "this court," it is an "axiom in the jurisprudence of this "court," that it makes no difference, that a statute relates in terms merely to remedy or enforcement of a contract. If a statute relating to remedy impair or lessen the value of a contract, it is obnoxious to the constitutional inhibition. In the present case the change is certainly material. It represents, of course, one-fifth of the whole interest, and the amount is large. Upon a redemption of the whole tract sold by the master, it would represent that portion of the interest for a year and a quarter on about $112,000; and for that portion of the premises involved in this present claim of redemption it represents such interest on $67,306. Of course the amount will vary with every case. We insist, upon the established law of this court, that the provisions of the law that entered into the contract of mortgage, cannot be changed to our detriment by any legislation or by authority of any court. The provision that "no state "shall pass any law impairing the obligation of contracts," must shelter this right as it did those at issue in the many cases that, involving that provision, have already been adjudged by this court.

But there is something more of this law than a mere matter of remedy and procedure. It has its operation, it is true, *during the period of enforcement* of the contract, but during that period it strikes directly at the contract.

That statute, adding a compulsory period of fifteen months to the period of the mortgage fastened upon the contract when it was made, and substituted its provisions for those of the mortgage itself upon condition broken. It provided that the estate and title of the mortgagor should not be divested, and vested in the mortgagee, without a sale; that the mortgagee, if he became a purchaser at that sale, should not thereby acquire at once the title, or the possession of the land; that for fifteen months more it should be subject to the right of redemption by the mortgagor or his creditors; but that during that fifteen months the money involved in his purchase at the foreclosure sale should bear interest against any person redeeming at the rate of *ten* per centum. These provisions *became part of the contract* of mortgage. This time of fifteen months' redemption is added by law to the time during which, under the mortgage, the money of the mortgagee may be withheld, and the *rate of interest for that time* is as much part of the contract of the parties as the rate during any other period; and the interest during this compulsory period of redemption can no more be changed by legislation or the orders of a court, without impairing the obligation and lessening the value of the contract, than the interest during any other period under the mortgage. It cannot be doubted that such a law would violate the obligation of the contract. It cannot be doubted that such an encroachment upon the contract of the mortgagee would be material. It can no more be doubted, that it is forbidden by the settled rules "*that are axioms in the juris-*" "*prudence of this court.*" *Edwards* v. *Kearzey*, 96 U. S., 601.

In that case of *Edwards* v. *Kearzey*, the court further said:

"It is also the settled doctrine of this court that the laws which subsist at the time and place of making a contract, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. *This rule embraces* alike those which *affect its validity, construction, discharge,* and *enforcement. Von Hoffman* v. *City of Quincy, supra; McCracken* v. *Hayward,* 2 How., 608.

"In *Green* v. *Biddle,* 8 Wheat., 1, this court said, touching the point here under consideration: 'It is no answer that the acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to *impair the rights and interests of the owner,* they are just as much a violation of the compact as if they overturned his rights and interests.

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force.' *Planters' Bank* v. *Sharp et al.,* 6 How., 301.

"It is to be understood that the encroachment thus denounced must be material. If it be not material, it will be regarded as of no account.

"These rules are axioms in the jurisprudence of this court. We think they rest upon a solid foundation. * *

"The *remedy subsisting in a state when and where a contract is made* and is to be performed, *is a part of its obligation,* and any subsequent law of the state which so affects that remedy as substantially to *impair and lessen the value of the contract is forbidden* by the constitution, and is, therefore, *void.*"

Von Hoffman v. *City of Quincy,* 4 Wall., 535.

Planters' Bank v. *Sharp,* 6 How., 301.

McCracken v. *Hayward,* 2 How., 508.

Bronson v *Kinzie,* 1 How., 311.

Green v. *Biddle,* 8 Wheat., 1.

If we had here a note or bond at fifteen months, its value would be thought to be impaired and lessened if twenty per cent. of the interest were stricken off by legislation. A note well secured that draws ten per cent. is worth more than one of equal amount that draws but eight. This represents one-fifth of the interest. In the present case the record shows (*Rec.*, p. 131–182) that FOWLER sought to tender the appellant, after the time for redemption had expired and long after the marshal's sale, the sum of $6,282 to cover this deficiency. This sum is not a consideration *de minimis* to most men. Of course such a tender was idle and fruitless; *first*, because the time had gone by and the legal rights of the parties were fixed and the title of the certificate holder had become vested; and, *second*, because payment to a certificate holder is ineffective for redemption by a judgment creditor. That will do for the mortgagor or his grantees, who have only to pay off an incumbrance and the title will remain clear in them. But the judgment creditor has no title. He is only entitled to *a sale*, at which he can bid his judgment debt in competition with others. Payment to the certificate holder will not produce a sale. And no court can relieve him against his blunders or the lapse of time. All these things are separately specifically settled in the cases already cited.

Chief Justice TANEY said, in *Bronson* v. *Kinzie*, 1 How., 311, that such a statute could not affect a previously existing contract. The same rule of obvious justice was reasserted by this court in *Brine* v. *Hartford Fire Ins. Co.* There we urged in argument that a certain time of redemption, three months, being given *before the sale*, was a substantial recognition according to the methods of the federal court of the right to redeem, and

that the rest was subordinate to the procedure of the court. But this court held that the *quantum* of time specified by statute was of the substance of the right—the whole period of 15 months—and that a diminution of the time was fatal. On the other hand, in *Allis* v. *Ins. Co.*, 97 U. S., 144, it was held sufficient that the statutory time was given *before* the sale, when the *whole* of it was given. But the duration of time is no more affirmatively expressed in this statute, than is the *rate of interest for that time.*

A point has been suggested that this second statute of the state, changing the rate of interest, was passed and took effect *before the decree was entered* in the federal court. It is hard to imagine a more immaterial suggestion. The rule of law is that the law in force when the mortgage *was made* entered into and became a *part of the contract;* and that "any subsequent law of the state "which so affects the remedy as substantially to impair "and *lessen the value of the contract* is forbidden by the "constitution." *Edwards* v. *Kearzey*, 96 U. S. 607.

It is the *contract* of the parties, the mortgage, which is protected by the constitutional inhibition, not merely the decree on that contract. Whether the new law is obnoxious or not is to be determined by its effect upon the contract, of which the law in force when it was made became a part. That being so, the time of passage of the new law is immaterial, provided it be subsequent to the contract so as to be able to affect it. If a subsequent law which annihilates twenty per cent. of the agreed rate of interest does not impair the obligation "and lessen the "value of the contract," it seems that the criteria which determine the application of the constitutional prohibition must be utterly capricious and uncertain.

EDWARD S. ISHAM,
Of Counsel for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 662.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Appellant,

vs.

ANNA C. CUSHMAN et al.

BRIEF ON BEHALF OF ROBERT D. FOWLER.

WILLIAM R. PAGE,
Solicitor for Appellee.

GEORGE F. EDMUNDS,
Of Counsel.

Thomas McGill & Co., Law Printers, Washington, D.C.

Supreme Court of the United States.

October Term, 1882—No. 662.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, APPELLANT,

vs.

ANNA C. CUSHMAN ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

MAY IT PLEASE THE COURT:

In order that the position of the respondent may be better understood, we herewith submit a brief statement of the admitted facts upon which the case of the appellant is founded.

January 29, 1870, William H. W. Cushman and wife executed to the Connecticut Mutual Life Insurance Company a mortgage upon certain lands to secure the sum of $75,000.

November 13, 1876, William H. W. Cushman conveyed said lands to William H. Cushman, subject to said mortgage.

December 12, 1877, default having been made, the Insurance Company filed its bill in the United States Circuit Court for the Northern District of Illinois to foreclose said mortgage.

July 14, 1879, decree of foreclosure was entered, and the property ordered sold, by the master in chancery. Said property was sold, and the Insurance Company became the purchaser for the amount of Cushman's indebtedness, interest and costs.

November 3, 1880, Henry S. Monroe recovered a judgment against William H. Cushman in the same court which entered the decree of foreclosure, sued out an execution, placed it in the hands of the United States marshal, who levied upon the lands involved in this case and described in said mortgage.

November 10, 1880, Monroe paid to the clerk of said Circuit Court, for the purpose of redeeming eighty-two of the lots levied upon, the amount for which said lots were sold, with interest thereon at the rate of eight per centum, as required by the statute of the State of Illinois *in force at the time of the rendering* of said decree of foreclosure, and received from said clerk a certificate of redemption of said lots.

On November 15, 1880, said Monroe assigned his judgment against Cushman, and all his interest in said levy and redemption, to Robert D. Fowler, who paid to the clerk of said Circuit Court, for the purpose of redeeming the remaining lots levied upon, the amount for which said lots had been sold, with interest at the rate of eight per centum, as required by the statute of the State of Illinois in force at the time of the entry of said decree, and received from said clerk a certificate of redemption of said lots.

On December 8, 1880, the United States marshal, having duly advertised, offered said lots at public auction, and, there being no other bidders, struck off the same to Robert D. Fowler for the amount of the redemption money paid thereon, with interest at the rate of eight per cent. from the date of redemption to the date of said sale.

On December 14, 1880, the United States marshal exe-

cuted and delivered to said Fowler a deed of said premises.

The Illinois statute in force at the time said mortgage was executed required the judgment creditor, seeking to redeem from foreclosure sales, to *pay to the officer*, "*into whose hands he shall have placed his execution*," "the amount of money for which the premises may have been sold, *with ten per centum per annum* interest thereon from the date of such sale, for the use of the purchaser thereof."

Said statute is set out on p. 129 of Record as exhibit D.

On July 11, 1878, the Circuit Court of the United States for the Northern District of Illinois entered of record certain rules in relation to the redemption of property from sales under decrees of foreclosure, following, substantially, all the provisions of said statute, but differing therefrom in this one particular, in that they required the redeeming creditor to *pay to the holder of the* certificate of redemption, or to the *clerk* of the said Circuit Court, the amount for which the premises to be redeemed were sold, with interest at the rate of ten per centum per annum from the date of such sale, and requiring the clerk thereupon to issue a certificate of redemption to such redeeming creditor.

Said rules appear on pp. 126, 127, 128 of Record, marked exhibit B.

On May 31, 1879, the statute above referred to was so amended as to require the redeeming creditor to pay *eight* per centum instead of *ten* per centum to the purchaser at the foreclosure sale. This statute went into effect July 1, 1879, before said decree of foreclosure was entered.

Said statute is exhibit C, p. 128 of Record.

BRIEF.

The foregoing statement of facts does not materially differ from that presented by counsel for appellant. We insist that counsel should be governed by the record, and that there is nothing in the record warranting the remark that Robert D. Fowler purchased the Monroe judgment "*for the purpose of speculating in this redemption*," or the further remark that William H. Cushman "*absconded.*" Neither statement is relevant to the questions involved in this suit, and *neither statement* is founded on fact.

The first 113 pages of the printed record have but little to do with this controversy, being a history of the foreclosure proceedings by the appellant. All the questions involved in the redemption proceedings are embraced in the motion of appellant for a rule on the master in chancery to show cause why he should not issue a deed to the Connecticut Mutual Life Insurance Co. (Page 114; Rec., pp. 200, 201, and 202.)

And in the answer of the master in chancery to said motion commencing on page 116. (Rec., p. 205 *et seq.*)

The reasons urged against the legality of this redemption are:

1st. That the redemption by Fowler was not made in conformity to the law of the State of Illinois, in this: that the money payable on redemption was paid to the *clerk of said Circuit Court* as required by the rules of said court, whereas it should have been paid to the *United States marshal*, in whose hands the execution was placed, as provided by the statute of the State of Illinois.

2d. That even if said redemption money might lawfully have been paid to the clerk as provided by the rules of said Circuit Court, instead of to the officer having the execution, the amount so paid was insufficient to entitle the

judgment creditor to redemption, because the redeeming creditor should have paid on said moneys interest at the rate of ten per centum from the time of the purchase at the master's sale until the time of redemption, whereas he paid on said moneys interest at the rate of eight per centum, as provided by the statute in force when the decree of foreclosure was entered and when said redemption was made; or, in other words, that the statute of the State of Illinois, in force at the time the mortgage was executed, formed a part of the contract, and that the statute of said State passed after the making of the mortgage, but before the entry of the decree of foreclosure, is, so far as the mortgage in question is concerned, unconstitutional, because it impairs the obligation of the contract. We will discuss these questions in the order stated.

I.

Had the Circuit Court of the United States for said northern district the right to enter the rules relating to the redemption of property which are the subject of this controversy?

Our answer is, that if the rules are not destructive of legal rights, if they are so framed as to preserve substantially rights created by law, the fact that they prescribe or regulate the form or mode of proceeding to secure the benefits of such rights, differing in some particulars from the form or mode of proceeding prescribed by the State statute, will not vitiate those rules. This question has been decided frequently by this court.

Brine v. *Insurance Co.*, 96 U. S. Rep., p. 639.

Says the court: "It is not necessary, as has been repeatedly said in this court, that a *form or mode of securing* a right like this should follow precisely that prescribed by the statute. *If the right is substantially preserved* or secured

it may be done by such suitable methods as the flexibility of chancery proceedings will enable the court to adopt, and which are most in conformity with the practice of the court."

Allis v. *Insurance Co.*, 97 U. S., 144.

In this case the statute of Minnesota declares that in the foreclosure of a mortgage, by a proceeding in court the debtor, *after the confirmation* of the sale, shall be allowed twelve months in which to redeem by paying the amount bid at the sale with interest. Where, in a foreclosure suit, a decree passed by a court of the United States sitting in that State ordered the master, *on making the sale*, to deliver to the purchaser a certificate that, unless the mortgaged premises were within twelve months *after the sale*, redeemed, by payment of the sum bid, with interest, he would be entitled to a deed, &c.: *Held*, that the decree gave substantial effect to the equity of redemption secured by the statute.

The court say: "This court will not reverse a decree in chancery for an immaterial departure from the technical rules, *when it can see that no harm has resulted to appellant.*" * * * "We have, in the case above referred to," (*Brine* v. *Ins. Co.*,) "expressed the view that if the courts of the United States give *substantial effect to the right of redemption* secured by the statute, they are at liberty in so doing to adhere *to their own modes of proceeding.*"

The statute of the State of Illinois in force at the date of the making of the mortgage provided that a judgment creditor should have the right to redeem from foreclosure sales by paying to the *officer having the execution* the amount of money for which said premises may have been sold, with interest prescribed, for the use of the purchaser of said lands.

In the case at bar the foreclosure was had in the United States Circuit Court for the Northern District of Illinois; the judgment of the redeeming creditor was obtained in the

same court, and the money to redeem was paid to the clerk of the same court and by him deposited in the sub-Treasury of the United States (sections 995 and 996 Revised Statutes of the United States, p. 186) for the use *of the purchaser* at the foreclosure sale. The rules of said court adopted after the decision in the Brine case required such redemption money to pe paid to the clerk.

What is the substantial right established by the statute of Illinois? It is the right of the mortgagor or of the judgment creditor to redeem from a foreclosure sale within a period prescribed by the statute; and this right should be favored by the courts.

Phillips v. *Demoss et al.*, 14 Ills., 413.

The court say: "The policy of the law is to encourage these redemptions rather than to suppress them. It was said by the court in the case of *Swezy* v. *Chandler*, 11 Ills., 449: 'The object of the legislature in allowing judgment creditors to redeem was to prevent a sacrifice of the defendant's estate and to make it pay as many of his debts as possible.' If this be the policy of the law, it is but carrying out its purposes for the debtor to confess a judgment for an honest debt which he owes for the express purpose of enabling his creditor to redeem, with the hope of realizing more at a second sale and thus secure a further payment of his debts. The statute holds out no inducements for a speculation at a sheriff's sale, beyond ten per cent. (statute of 1845) for the use of the *purchase money*, and the *purchaser* can set up no equitable claim beyond that, where the redemption is made according to the provisions of the statute. * * * It is also averred that they confessed the judgment *for the purpose* of enabling themselves to redeem *after the time within which they had a right to redeem.* If such was their purpose, it is not perceived how that should have prejudiced the rights of the judgment creditor. No matter what their motive was, his judgment was legal

and valid, and he had a right to enforce it in any legal mode." * * *

"It was said that in order to entitle a judgment creditor to redeem, he should have a judgment either *at the time of the sale*, from which he redeems, or at least *before the expiration of twelve months*, within which the judgment debtor may redeem. The statute does not say so, but it says that *any* judgment creditor may redeem. He may get his judgment the *last hour of the fifteen months;* and he is as much both within the letter and intention of the statute, *as if it were of a year's standing.*"

It would be regarded as very inconsiderate legislation if the law creating a valuable right should omit to prescribe a mode of preserving that right; but the substantial right so far transcends in importance the mode or form of preserving it, that the former when vested cannot by law be divested, while the form of procedure may be changed, provided the change is such as not to trespass upon the right itself.

It is true that the State courts of Illinois, in passing upon this law of redemption, have held that the statute must be strictly followed, and no doubt the leading cases in Illinois upon this subject will be relied upon by counsel for appellant as conclusive of the justness of their position. These cases are—

Stone *v.* Gardner, 20 Ills., 308.
Littler *v.* People *ex rel.*, &c., 43 Ills., 188.

The Supreme Court of Illinois is the creature of the statute of the State of Illinois, and when a proceeding in foreclosure comes under *its* jurisdiction, it may be conceded that that court would pursue the law to which it is subordinate, provided that law be a valid law. But it has been frequently held by this court that the decisions of State courts are not so far binding upon the Federal

courts as to preclude them from following their own *rules and modes* of practice and procedure, provided they do not abridge or destroy the substantial rights of the individual.

Referring once more to the *Brine case, supra.* Before the decision in that case, the uniform practice of the Federal courts in Illinois had been to give the mortgagor one hundred days, after the decree of foreclosure, to pay the amount of the decree, and if he failed to do so within that period, the sale was made absolute. Here was an instance in which the substantial statutory *right of redemption* was, by the rule of the Federal court, invaded and destroyed, and this court, in that case, took occasion to correct the practice and drew the distinction, contended for here, between the substantial right and the mode or form of preserving that right. This court denied the right of the court to touch the former, but recognized its right to regulate the latter. It was in the light of this decision, and after careful consultation and deliberation between the learned circuit and district judges of the United States for the northern district of Illinois, that the rules now called in question were framed "for the purpose of adapting the State statutes to the proceedings in said Circuit Court in such a manner as to *preserve the substantial right of redemption*, and at the same time keep the foreclosure proceedings and the moneys realized therefrom within the control of the Federal court."

> See answer of Henry W. Blodgett to the petition *ex parte* Con. Mut. Life Ins. Co., Oct. term, No. 8, *original*, which we respectfully ask the court to consider in connection with this argument.

If then the substantial right of redemption is, by said rules, secured to the *mortgagor* or *redeeming* creditor on the one hand, and the right to the redemption money secured to the *purchaser* at the foreclosure sale on the other, can it be said that the payment of the redemption money to the clerk instead of to the marshal for the use of the *purchaser*

at the foreclosure sale, is anything more than a *mode* or a *form* of procedure? For, as we have seen, whether paid to the marshal or to the clerk, in either event it must be paid into the sub-treasury or other duly authorized depository, for the benefit of such purchaser, in accordance with those sections of the judiciary act above quoted.

Notwithstanding the decision in the case of Littler v. People, 43 Ills., 188, the same court has since held that the payment of the redemption money to an *agent* appointed by the sheriff, was a substantial compliance with the State statute, and that court has not held that such payment to an agent of the purchaser invalid.

Roan v. *Rohrer*, 72 Ill., 582.

If payment to an agent appointed by the sheriff, or to an agent appointed by the purchaser, be good, upon what ground can it be argued that a payment to an officer of the court, designated by the court, having full jurisdiction of the foreclosure proceedings and of the parties thereto, is invalid?

We maintain that the Federal court can appoint an agent to receive and pay the money to the purchaser at the foreclosure sale; that the court itself could receive the money, place it in the registry of the court, and order it to be paid to the purchaser; we maintain that the payment of the money to the clerk for the use of the purchaser at the foreclosure sale is, in law, a payment to the purchaser, and that such *modes or forms* of procedure in no manner affect the substantial right of redemption.

Suppose that on the last day given by the statute to the creditor to redeem the marshal should die, and no one should be appointed to fill his place until the time of redemption had expired, can it be contended that the court could not direct some officer of the court to receive the money, or order it paid into the registry, or even receive it itself? If such be the case, then this mere formality as to

the channel, which the money must follow, in order to reach the pocket of the purchaser, where the law intends it shall go, of more importance than the right itself, then must the mortgagor or redeeming creditor lose this valuable right of redemption, and the purchaser at the foreclosure sale be deprived of the money he wants, because a mere form or mode of procedure, having in itself no intrinsic value, has not been strictly pursued. Such a position would sacrifice the right for the form, would substitute the shadow for the thing itself, and ought not to receive the assent of the highest tribunal of the land.

If this redemption be not good, it is because the Federal court for the northern district of Illinois had no right, power, or authority, in any way or manner, or under any circumstances, while preserving the substantial right of redemption provided by the statute, to order the redemption money to be paid to any one but the officer holding the execution. If such right, power, and authority existed, then we think it is plain that the redemption was good.

It may be argued that the marshal has no right to make the sale and treat the amount of redemption money as having been bid at such sale, unless he has *said money in his hands* at the time of the sale.

In fact such seems to be *the* point which the learned counsel insists is decisive of this question. He says in his brief "that the procedure in this case does not conform to the requirements of the statute, is conceded. The principle of divergence is in this: that by the statute payment of the redemption money to the officer having the writ to execute, TO BE IN HIS HANDS *a bid at his execution sale, is a condition precedent to any power of the officer to issue* any certificate of redemption, or to offer under his execution the land for sale for the redemption money."

To quote once more from his brief: "The law of the State, therefore, is that the lodging of the redemption

money by the redeeming creditor in the hands of the officer holding his execution is a requirement apart from which the statute gives no right to redeem; *and the reason is that this money is made, in the hands of the officer, an inseparable part of his execution of the writ. It is an advance bid at his sale, and* IN HIS HANDS is part of the proceeds of the sale."

Quoting once more from the brief: "*The possession of the redemption money* IN HIS OWN HANDS *is a condition precedent to any power of the officer to treat it as a bid at his sale,*" &c.

Now the Federal statute provides as follows:

Revised Stat. of the U. S., p. 186, secs. 995 and 996:

Section 995: "All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, an Assistant Treasurer, or a designated depositary of the United States *in the name and to the credit* of such court: *Provided*, Nothing herein shall be construed to prevent the delivery of any such money upon security according to agreement of parties under direction of the court."

Section 996: "No money deposited as aforesaid *shall be withdrawn except by order of the judge or judges* of said courts respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk, and every such order shall state the cause in or on account of which it is drawn."

Inasmuch as counsel maintain that a divergence even to the extent of a *hair's breadth* would vitiate this statutory right of redemption, the moment the marshal parted with the control of the money as required by the statute, it was no longer *in his hands* as a bid, and the redemption must fail; on the other hand, if he did not pay over the money

he would be liable under the Federal statutes to punishment. The very fact that the Federal and State statutes differed in this respect made it necessary for the Federal court to pass such rules for the regulation of the Federal practice, as would conform to the Federal statutes and at the same time preserve the substantial right. Any other proposition might give rise to the peculiar dilemma that compliance with the statute would vitiate the redemption, and non-compliance would be a violation of the Federal law.

The answer, therefore, to this position is, that under the State law, in proceedings of this character, the sheriff is made the custodian of the money, and treated as the *registry of the court*; while under the Federal law the marshal has no such office to fulfill, and the money, whether paid to the clerk or the marshal, must forthwith be paid into the registry *subject to order of the court*, and not of the clerk or marshal, at the time of making the sale. Hence that question cannot affect the *purchaser*, if he gets the full amount of interest and costs to which he is entitled. This right of the *purchaser to receive* the full amount of his bid is *his* substantial right, and the right of the mortgagor or judgment creditor to pay that amount and get the land is *their* substantial right.

This court will not inquire into the reasons which induced the entry of these rules. The only inquiry should be: Had the court the power to enter the rules?

II.

It being established that the payment of the redemption money to the clerk, as provided by the rules, did not invalidate the redemption, our next inquiry is: What rate of interest should the redeeming judgment creditor have paid on making redemption? Or, to change the form of the proposition, which statute governs in this case—the statute

of 1845, in force when the mortgage was executed, or the statute of 1879, in force when *the decree was entered and when the sale and the redemption were made?*

Decree of foreclosure dated July 14, 1879.

Date of amendatory act, May 31, 1879; in force July 1, 1879.

Date of sale, Aug. 15th, 1879.

Date of redemption, Nov. 10th, 1880, and Nov. 15th, 1880. (Rec., p. 67.)

Before entering into this inquiry it is proper to repeat that the rules entered by said Circuit Court, regulating redemptions, were entered after the decision in the *Brine* case, so as to conform to the *then existing* statute. That statute provided for the payment of ten per centum. After the entry of the rule the statute was amended, reducing the rate of interest to be paid to *purchasers* at foreclosure sales on redemption, from *ten* per centum per annum to *eight* per centum per annum. Though the rules were (probably through inadvertence) not changed *of record* so as to conform to the amendatory statute in that regard, yet the court considered, and have continued to act upon the consideration, that said rules were in that respect changed by *operation of law.*

The power to regulate the rate of interest has always been deemed a power belonging to the sovereignty of the State. It is a question of State regulation. This power the Federal courts cannot interfere with. It is a substantive right which they cannot control. Hence any rule of court which contravened or changed the statute regulating rates of interest would to that extent be invalid.

Counsel for the relator contend that this amendatory statute, if applied to this case, comes within the provisions of section 10 of article I of the Constitution of the United States, and is therefore void.

It is to be observed that the motion of appellant for a

rule on the master to issue a deed, which was denied, was a motion *by the purchaser* at the foreclosure sale to enable him to obtain a deed of the property which said Fowler had redeemed, and of which said Fowler held the deed from the United States marshal.

The rights of the appellant, therefore, if any it has, are the rights *of the purchaser* and not the rights of *a mortgagee*.

The fact that the original mortgagee became the purchaser at the foreclosure sale does not in any manner change its relation in that regard. Its relation is that of *purchaser*, and its rights are to be determined and measured by the same principles as would be applied had *an entire stranger* become the purchaser.

The original contract between Wm. H. W. Cushman, the mortgagor, and the Connecticut Mutual Life Insurance Company, the mortgagee, was *merged* in the decree.

Satisfaction of that decree by sale of the mortgaged lands put an end forever to the relation of mortgagor and mortgagee.

When the sale took place, who was the purchaser? Was he in any manner a party to the contract between the mortgagor and mortgagee? No; he was not even, in the eye of the law, *in esse* when the original contract was entered into. He made his first appearance on the scene when he attended the sale to purchase. What privilege does the law extend to him? It either gives him the land at the end of fifteen months in case no one appears to redeem, or enables him to hold it as security *for the amount of his bid*. It tells him that if any person seeks to redeem from him, he will receive back his money and interest thereon. At what rate? Not at the rate existing long before he was *in esse*, but the rate as established by law when he paid his money and received his security. He purchases under the *then* law.

That portion of the statute which prescribed the amount to be paid to the *purchaser* at foreclosure sale by the mort-

gagor or his judgment creditor, did not enter into or form any part of the original contract between the mortgagor and mortgagee. That contract between mortgagor and mortgagee was discharged and ended when the debt was paid. It makes no difference whether it was paid and discharged by the direct payment of the money due, or by the sale of the land. If a *stranger* at the foreclosure sale had at the foreclosure sale bought the land and paid the entire amount due, with all costs and expenses, the entire obligation of the mortgagor to the mortgagee would have been discharged.

If the *mortgagee* chooses to bid at the sale, and bids the whole amount due, with costs, the original contract between the mortgagor and mortgagee is cancelled and ended, to the same extent as though an entire stranger had bought the property and paid the money, and the latter purchases with reference to the law in force at the time of the purchase.

After the bid by the mortgagee and the sale of the land to him, his rights are those secured to him by virtue of his being the holder of the certificate of sale. They are the rights of a purchaser at that sale, and *nothing* more. The law invoked by the counsel for appellant refers to and is intended for the protection and benefit of the *purchaser*, and not for the benefit and protection of the *mortgagee*.

The rights of the purchaser were those given to him by the law existing at the time of his purchase. That law gave to *him* eight per cent. on the amount bid by him, if the property was redeemed, and if not redeemed it gave him the land.

The obligations resting upon the *mortgagor and mortgagee arise out of the contract of mortgage.*

The obligations and rights of the *purchasers* at the sale and of the redeeming creditor arise out of, and are created by, the law in force *at the time of the purchase.*

But it is said that this law changing the rate of interest to be paid to the purchaser at the foreclosure sale on re-

demption, impairs the *obligation* of the original contract between mortgagor and mortgagee, because the *purchaser* would be likely to bid more at the sale, if he was to receive ten per cent. in case of redemption, than if he was to receive but eight per cent.

To this we reply that the *interest* to be paid to the *purchaser* forms no part of the obligation of *mortgagor* to *mortgagee. The latter obligation is to pay the debt.* After the debt is *paid* by sale of the land, the obligation under the contract between mortgagor and mortgagee is ended.

Again, we say that the amount to be paid by the mortgagor, or his assignee, or judgment creditor, is a *penalty* imposed upon the mortgagor or his judgment creditor in case he redeems.

The *decree* drew six per cent. The mortgagor could satisfy the decree at any time before sale by paying its amount with six per cent. interest and costs. The old law said to him, or his assignee, or judgment creditor, "if you permit this property to be sold, you shall not only pay the six per cent interest which had attached to the *decree*, but you shall pay in addition a *penalty of four per cent.*" The new law reduced the penalty from four to two per cent.

It is a well settled principle that a law which relieves from penalties, or consequences in the nature of penalties, is not obnoxious to the constitutional provision here invoked.

Wood *v.* Kennedy, 19 Ind., p. 68.

In that case it was held that the interest law of 1861, so far as it relieves the promissor from the penalties or consequences in the nature of penalties imposed by the law of 1852 on the same subject, was not a law impairing the obligation of the terms of the contract, but rather enforcing and validating them.

The law of 1852 required a party suing on a usurious contract to forfeit all interest; and if any interest had been

paid the amount might be deducted from the principal and judgment given only for the balance. The law of 1861 in such case forfeited only the usurious excess of interest, but allowed recovery of interest at legal rate; and in case of payments of usurious interest having been made on the contract, only the usurious excess in such payments over the legal rate could be deducted: *Held*, that the law in force at the time the remedy is sought upon the contract governs.

If the position of counsel for appellant be sound, then would a law changing the amount of costs as to pending suits to be paid to the officers of a court, or abolishing or changing the fees to be allowed the plaintiff's attorney or solicitor, also come within the constitutional provision; yet it has frequently been held that such laws do not impair the obligation of existing contracts.

Bank *v.* Dudley, 2 Pet., 492.
Eaton *v.* U. S., 5 Cranch, 281.
Taylor *v.* Keiler, 30 Conn., 324.

2 Story, 247 (4th ed.):

"The obligation to perform a contract is coeval with the undertaking to perform it. It originates with the contract itself and operates anterior to the time of performance. The remedy acts on the broken contract, and enforces a pre-existing obligation," (mortgagor and mortgagee.) "A State legislature may discharge a party from imprisonment upon a judgment in a civil case without infringing the Constitution, for this is but a modification of the remedy, and does not impair the obligation of the contract."

This court has often decided that statutes of limitation affecting *existing* rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect.

Terry *v.* Anderson, 95 U. S., 632, and cases cited.

It might with equal force be said that a bond which would not be barred for twenty years might be affected as

to value by an amendatory law which would shorten the period to ten years, as to say that the value of the contract in this case between mortgagor and mortgagee was reduced in value by the amendatory act fixing the relations of *purchaser* and judgment creditor, passed before either of said parties had in law any existence.

In Kenzie *v.* Bronson, 3 How., 315, this court said:

"Undoubtedly a State may regulate at pleasure the mode of proceeding in its courts in relation to past contracts as well as future; and although a new remedy may be less convenient and render the recovery of debts more tardy and difficult, yet it does not follow that the law is unconstitutional. Whatever belongs to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract."

In Templeton *v.* Horne, 82 Ills., 492:

Proceedings were instituted to enforce a mechanic's lien. Before decree thereon an act was passed allowing redemptions from sales made under decrees in mechanic's-lien cases. It was held that the law did not impair the obligation of the contract. At the time of making the contract no statute of redemption existed, but the sale was absolute. The act was passed before the decree and before the sale.

In that case the court say:

"The *purchaser* at that sale knew he was buying the property subject to redemption, and we are at a loss to understand what right he has to complain. He *gets all he bought, and in justice can claim no more.*"

So in the case at bar, the purchaser bought with full knowledge that a redemption could be made with eight per cent. interest. It got all it bought, and ought not to be allowed to complain.

Smith *v.* Bryan, 34 Ills., 364.
Hall *v.* Brente, 20 Ind., 304.
Frost *v.* Illsby, 54 Me., 345.
Martin *v.* Hewitt, 44 Ala., 418.

So laws may be amended at any time regulating the rate of interest on judgments and decrees.

Hence, if a promissory note bearing ten per cent. interest be reduced to judgment, *the judgment* will carry the rate prescribed by the statute existing *at the time the judgment was rendered*, although it may have been passed *pendente lite* reducing the rate of interest theretofore prescribed on judgments and decrees.

Such a law would not impair the obligation of the contract represented by the note, although the same argument might apply as is used in this case, that the *value* of the note might be thereby impaired. The reason is that such laws, *whatever their effect*, are not considered as applicable to the constitutional principle. Laws impairing the obligation of contracts are:

1st. Those which annul, modify, or alter the contract *itself*.

1 Comstock (N. Y.), 133.
Story's Com., sec. 1379.
Ogden *v.* Sanders, 4 Wheat., 197.

2d. Those which change the effect given by existing law to the terms of the contract.

3d. To quote the language of Chief Justice Taney, the obligation of a contract may be impaired by a law "denying a remedy altogether, or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth possessing."

If it were admitted that this law might to a trivial extent be likely to diminish or affect the bid of the purchaser at the foreclosure sale of the land, no case can be found where for this kind of impairment of the remedy a law has been held void, when it is considered that the law applied not to mortgagor and mortgagee, or to the decree of fore-

closure, which carried only six per centum, but to *purchaser* and judgment creditor, and was in force before *their* rights became vested or before they were *in esse.*

Before closing this argument we desire to call attention to a tender in writing by Fowler to the purchaser of the difference between eight and ten per cent., made on July 20, 1881.

It is *Exhibit F* on pages 131 and 132 of Record.

This tender was made, not because it was thought that the redemption as made was not good, but to "avoid any pretended claim of the Connecticut Mutual Life Insurance Company in law or in equity to the premises." If it could be supposed that ten per centum should have been paid instead of eight, that the payment at that rate was made by the judgment creditor in good faith, under the belief that he was complying with the law as it then existed, and was misled by his obedience thereto, cannot a court of equity, while the cause *is still* pending and undetermined, preserve to the creditor the redemption made by him, and to that end give effect to the tender made? There are cases *at common law* where relief of this character was refused, but we have not found any distinctly decided case where such relief was refused by an *equity court* in a case like this.

In *Hunt* v. *Rousmanier*, 8 Wheat., 215, Chief Justice Marshall says: "Although we do not find the naked principle that relief may be granted on account of ignorance of law asserted in the books, we find *no case in which it has been decided that a plain and acknowledged mistake in law is beyond the reach of equity.*"

In *Crozier* v. *Acer*, 7 Paige, 137, 143, Chancellor Walworth says: "If this court can relieve against a mistake in law in any case where the defendant has been guilty of no

fraud or unfair practice, which is at least very doubtful, it must be in a case in which the defendant has in reality lost nothing whatever by the mistake, and when the parties can be restored substantially to the same situation in which they were at the time the mistake happened."

Does not this case come within one of the numerous exceptions as to relieving from mistakes of law? We find a law on the statute-book providing that the judgment creditor shall pay eight per cent. on redemption; that this law was an effective law before the decree and sale and redemption; that he was dealing with the purchaser and not with the mortgagor; that no objection was made at the time; that the *mortgagee* had been paid in full by the sale and had never made objection to the redemption; that the *purchaser* bought with the full knowledge of the statute. If there be a possibility of holding that the payment was too small by two per cent., should not the redemption be sustained upon reimbursing the *purchaser* to the full extent of his investment and interest. This is a peculiar case of a mistake (*if there was a mistake*) arising out of a *defect* in the law.

In conclusion we will say, that it is our conviction that the redemption was valid; but if it be possible that it was not valid, all the circumstances appeal to this court to allow the tender to give effect to the redemption, for, as Judge Story says (1 Story Eq. Jur., 11th ed., p. 141, sec. 138 f.):

"We think it creditable to the courts and to the profession that, with all the zeal that has been sometimes manifested, to make the rule excluding relief, in courts of equity, in every case of pure mistake of law, absolute and inflexible, the sense of justice has steadily withstood the refinements of logic on the one hand and the blind love of formal symmetry upon the other. We trust the principle that cases may and do occur where courts of equity feel compelled to grant relief upon the mere ground of the mis-

apprehension of a clear rule of law, which has so long maintained its standing among the fundamental rules of equity jurisprudence, is yet destined to afford the basis of many wise and just decrees without infringing the general rule that mistake of law is presumptively no sufficient ground of equitable interference."

WILLIAM R. PAGE,
Solicitor for R. D. Fowler.

GEORGE F. EDMUNDS,
Of Counsel.

108-51

OFFICE SUPREME COURT U. S.
FILED
JAN 19 1883
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 662.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Appellant,

vs.

ANNA C. CUSHMAN et al.

Supplemental Brief by George F. Edmunds, for Defendant R. D. Fowler.

WILLIAM R. PAGE,
Solicitor for Fowler.

Thomas McGill & Co., Legal Printers, 1107 E street Northwest.

SUPREME COURT OF THE UNITED STATES.

No. 156.

JOHN R. METSKER AND ELIZABETH METSKER, APPELLANTS,

vs.

GEORGE H. BONEBRAKE, ASSIGNEE OF JOHN R. METSKER, A BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden in the United States court house at Indianapolis, in said district, on the first Tuesday in November, in the year of our Lord one thousand eight hundred and seventy-nine, before the honorable Walter Q. Gresham, judge of the district court of the United States for said district, and ex officio judge of said circuit court.

GEORGE H. BONEBRAKE, ASSIGNEE IN BANKRUPTCY of John R. Medsker,
vs.
ELIZABETH MEDSKER AND JOHN R. MEDSKER. } 5361. In chancery.

Be it remembered that heretofore, to wit, on the 27th day of June, A. D. 1877, at the May term of said court, before the honorable Walter Q. Gresham, judge as aforesaid of said court, the following proceedings in the above entitled cause were had, to wit:

Comes now the complainant, by Messrs. Fertig, Shirts and Fertig, and Messrs. Dye and Harrie, his solicitors, and files his bill of complaint herein in the words following, to wit:

2 To the judges of the circuit court of the United States for the district of Indiana:

George H. Bonebrake, assignee in bankruptcy of John R. Medsker, brings this bill against Elizabeth Medsker, wife of the defendant, John R. Medsker, all of whom are citizens of the State of Indiana, and thereupon your orator complains and says:

That on the 1st day of Dec., 1876, the defendant John R. Medsker was adjudged a bankrupt in the district court of the United States in and for the district of Indiana, upon a voluntary petition in bankruptcy filed in said district court, on the 1st day of Dec., 1876; and your orator was elected and appointed assignee in bankruptcy of the estate of said Medsker, according to the provisions of the law of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," and the amendments thereto, and a conveyance and assignment was made to him as said assignee by John W. Ray, register in bankruptcy in said district, of all the estate and effects of said bankrupt according to law.

On the 2nd day of August, 1876, and within four months of the time of the filing of such petition in bankruptcy, the said John R. Medsker was the owner of a tract of land in Hamilton County, Indiana, described as follows, to wit:

3 The southeast quarter (¼) of section thirty-five (35), township nineteen (19) north, of range four (4) east, in Hamilton County, Indiana, and which was of great value, to wit, of the value of $10,400.

At the same time he was a member of the firm of Poe and Medsker, engaged in the business of selling hardware and agricultural implements at Noblesville, Indiana, which firm was largely indebted to various persons, to wit, in the sum of $5,000 in excess of its assets.

The farm above described was the home upon which Medsker resided, and was the whole of his property, except his stock, farming utensils, and household goods, and his interest in the firm of Poe and Medsker.

On that day, to wit, Aug. 2nd, 1876, within four months of the time of filing said petition in bankruptcy, the said John R. Medsker being the owner, in his own right, of the real estate above described, and being indebted as aforesaid, with the fraudulent intention of defeating the operation and effect of the bankrupt law, and with the fraudulent intention of preventing his property from being distributed and applied in payment of his debts as provided for in the bankrupt law, and with the intention of defrauding and cheating his creditors, and with the in-
4 tention of preferring, in violation of the provisions of the bankrupt law, a pretended claim of the defendant Elizabeth Medsker, which claim your orator says was unjust and incorrect, and not a valid and legal claim against said John R. Medsker, the said John R. Medsker, together with his wife, the defendant Elizabeth Medsker, did execute, without any consideration whatever, to one C. J. McCale, who was a party to such fraudulent purpose, a deed of conveyance of said real estate, and the said grantee, C. J. McCale, in pursuance of the previous understanding and agreement, and for the purpose of carrying out the fraudulent intent before expressed, did convey said real estate to the defendant Elizabeth Medsker, wholly without any consideration, on the 4th day of August, 1876.

And your orator states that said Elizabeth Medsker was fully cognizant of the fraudulent and wrongful intention of said John R. Medsker, and participated in the same, and joined in the deed to McCale for the purpose of carrying out the same, and accepted said fraudulent conveyance from C. J. McCale with full knowledge of its purpose, and with the intention of carrying out such fraudulent purpose.

And your orator states that a large portion of the indebtedness of said John R. Medsker in existence at the time of such conveyance remains unpaid, to wit, $7,000, and there are no other assets with which
5 to pay the same, except said land above described.

Wherefore your orator prays that said Elizabeth Medsker may be held and treated as a trustee of said real estate, for the benefit of the creditors of the said John R. Medsker, and that said land may be held as a trust for the payment of the debts of said John R. Medsker; and that said land may be sold to pay said debts, free from all claim of the defendant Elizabeth Medsker, and for all proper relief.

SHIRTS, FERTIG AND SHIRTS AND
DYE AND HARRIS, *Solicitors for Plaintiff.*

And afterwards, to wit, at the May term of said court, on the 4th day of August, 1877, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Messrs, Finch and Finch, their solicitors, and enter their appearance herein.

And afterwards, to wit, at the May term of said court, on the 3rd day of September, 1877, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by counsel, and upon motion this cause is

the defendant Elizabeth Metsker, of fifty-seven hundred dollars and accumulated interest thereon, for money loaned by said Elizabeth Metsker to him, at his request, and which he had promised to repay her on demand.

They deny all fraud or fraudulent purpose in said transaction and conveyance toward the creditors of said John R. Metsker, or others, at the time of said conveyance. They deny that at the time of said conveyance said John R. Metsker was in failing circumstances, and specially deny that they or either of them knew or believed that at that date he was unable to pay his debts.

They deny that he was adjudged a bankrupt on the first day of December, 1876, as in said bill charged.

They say that a large portion and amount of the indebtedness of the firm of Poe & Metsker, mentioned in said bill of complaint, existing on the 2d day of August, 1876, when said conveyance was made, to wit, the sum of four thousand dollars, was afterwards paid off and discharged by them in the ordinary transactions of business.

And these defendants deny all, and all manner of, fraud with which they are charged in said bill, that any other or different matter or thing in said bill material for them to answer, and not herein already answered or denied, they deny and require proof thereof; all of which matters and things they are willing to aver and maintain as this court shall direct.

And they hereby pray to be dismissed hence with their reasonable cost.

JOHN R. METSKER.
ELIZABETH W. METSKER.

STATE OF INDIANA, }
Hamilton County. }

The defendants being duly sworn before me, a notary public in and for said county, say that the matters and things therein answered and stated, so far as they rest upon their own knowledge, are true, and so far as derived from the information of others, they believe to be true.

In witness whereof I have hereunto set my hand and notarial seal this 8th day of May, 1878.

[SEAL.] THEO. P. DAVIS,
Notary Public.

(Endorsed on back:) "George H. Bonebrake *vs.* John R. Metsker & Elizabeth W. Metsker. Answer. Filed May 9th, 1878. W. P. Fishback, Cl'k."

The within answer to the bill, which was filed May 9, 1878, having by accident been omitted from the Transcript, it is agreed by counsel that it shall be inserted and taken in all respects as if originally in the Transcript.

JOHN A. FINCH,
For Appellant.
ADDISON C. HARRIS,
For Appellee.

U. S. A. Circuit Court for the District of Indiana.

George H. Bonebrake, assignee,
v.
John R. Metsker and Elizabeth W. Metsker.

The joint and several answer of the defendants John R. Metsker and Elizabeth Metsker to the bill of complaint exhibited against them in said court by the complainant.

These defendants, reserving unto themselves all manner of objection to said complaint on account of the manifold errors and imperfections thereof, for answer thereto, or to so much thereof as they are advised it material for them to answer, say:

That it is true that on the second day of August, 1876, they joined in a deed by which they conveyed to C. J. McCole the southeast quarter of section thirty-five, township nineteen north of range four east, in Hamilton county, for the purpose of having the same reconveyed to the said Elizabeth Metsker by the said C. J. McCole, which was afterwards done by said McCole on the 4th day of August, 1876, and that the said Elizabeth Metsker took said deed, and by virtue thereof she and her husband have remained in possession, he by her consent, of said land, claiming it as the land of said Elizabeth Metsker.

They say and answer further that on the 29th day of December, 1876, following the date of said deed, the said John R. Metsker, on his voluntary petition, was adjudged a bankrupt by the District Court of the United States for the District of Indiana, and that the plaintiff was appointed assignee of his estate by John W. Ray, register in bankruptcy, and that about the 10th day of February, 1877, he entered upon his duties as such.

The say that said conveyance by them to McCole, and by McCole to the defenndant Elizabeth Metsker, was done in order and for the express purpose, and for no other purpose, of thereby paying and discharging by the said John R. Metsker a debt which he owed to

6 referred to Livingston Howland, master, to take the evidence in the above-entitled cause and report his finding thereon with all convenient speed.

And afterwards, to wit, at the May term of said court, on the 3rd day of June, 1878, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Livingston Howland, esq., master in chancery, heretofore appointed herein, and files his report, together with the evidence taken herein, and said report is in the words following, to wit:

To the honorable court:

The undersigned master, to whom was referred the above-entitled matter, respectfully submits the following report:

On the 2nd day of August, 1876, John R. Medsker and wife conveyed the land described in the bill to Cyrus J. Cole, who, on the 4th of same month, reconveyed the same to the wife Elizabeth Medsker, the defendant. At the time of these transfers the land belonged to John R. Medsker in fee simple.

On the 1st day of December, 1876, one Poe, with whom Medsker was in partnership in the hardware business, filed his petition (voluntary) in bankruptcy, alleging that Medsker would not join him and making
7 him a party, and praying that he be adjudged a bankrupt.

On the 29th of December, 1876, Medsker comes in, confesses bankruptcy, and is adjudged accordingly.

The first thing to consider is whether the transaction is within the limit of time prescribed by section 5128, U. S. R. Statutes, before bankruptcy, which renders it void as a preference. If this is regarded as a case of involuntary against the non-joining creditor, then under the amendment of 1874, two (2) months is the limit; but if we regard it voluntary on the part of the partner when he comes in and confesses, then he should not be regarded as commencing proceedings until the 29th when he filed his papers, which would be more than four months after the conveyance. So that regarding Medsker as either an involuntary or voluntary bankrupt, both the 2 months and four months had expired since the making the deed; the first when he was proceeded against by his partner, the last when he came in and joined in the petition. As to him, I regard the proceeding as involuntary and that the two months' limitation under the amendment of 1874 applies.

Then the conveyance would stand unless it was void or voidable
8 independent of these provisions of the bankrupt act as against creditors.

The defendant, the evidence shows, married the bankrupt Medsker some thirteen years ago. During the last ten years her husband came into possession of moneys belonging to her, proceeds mostly of lands, inherited from her father, amounting in the aggregate to $5,600, as I figure it. She expressly testifies that he agreed to return it to her, and she always claimed that he was her debtor to that amount. Under the evidence I think there is no doubt she was a creditor at the time of the conveyance. I think the evidence shows that he was insolvent, also, at that time, though not that

she knew it. I think the conveyance was made and accepted to prefer her to other creditors. Under the evidence as to the value of the land, which is conflicting, I cannot find that his indebtedness to her was not a reasonable consideration for the conveyance of the land, or that there is such great disparity between the land and the debt it was conveyed to satisfy as to indicate bad faith and a purpose to defraud other creditors.

In the whole evidence my finding is that the allegations of the bill are not sustained and that the conveyance to the wife is not to be avoided by the complainant assignee.

All of which is respectfully submitted.

LIVINGSTON HOWLAND,
S. Master.

9 Evidence upon which report is based, examination of divers witnesses at Indianapolis, with Exhibits marked A.

And afterwards, to wit, on the 1st day of July, 1878, in recess of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by Messrs. Dye and Harris, his solicitors, and files his exceptions to the report of the master herein, in the words following, to wit:

Exceptions taken by the complainant to the report made herein by Livingston Howland, esq., one of the masters of this court, to whom this cause was referred, by an order of this court made and entered on the day of , 1878, which report bears date of June 3, 1878.

FIRST EXCEPTION.—For that the said master in his said report finds that said John R. Medsker in an involuntary bankrupt, and said conveyance of said land by him to his wife through said Cole, on August 4, 1876, is no longer subject to investigation, being barred by the provisions of the bankrupt law, whereas said master should have found that said Medsker was a voluntary bankrupt, and that the proceedings related back to December 1, 1876, and that said conveyance was fraudulent under the provisions of said acts.

10 SECOND EXCEPTION.—For that the said master in his said report finds that said wife was the creditor of her husband in the sum of $5,600.00 at the time he conveyed said land to her through said Cole, and that said wife had no knowledge of her husband's insolvency at the time of said conveyance, whereas said master should have found that she had knowledge of her husband's insolvency, and that she was not a creditor of her husband for any sum.

THIRD EXCEPTION.—For that said master in his said report finds that said wife was a creditor of her husband at the time of the conveyance to her, and that said land was not of a value sufficient to indicate the fraudulent intent of her husband, whereas said master should have found that under all the evidence taken before him and made a part of his report, that not only was said conveyance made by the husband with a fraudulent intent to cheat, hinder, and delay his creditors, but that she knew, or at least ought to have known, and is chargeable with notice of said fraudulent intent, which renders said conveyance void.

FOURTH EXCEPTION.—For that said master finds in his report that
11 "On the whole evidence my finding is that the allegations of the

bill are not sustained, and that the conveyance to the wife is not to be avoided by the complainant," Whereas the master should have found on the evidence taken by him and returned with his report and made a part thereof, together with the bill, did entitle the complainant to a decree setting aside said deeds, viz, the deed of said bankrupt to Cole, and said deed by Cole to the said wife, as fraudulent and void against the creditors of said estate and said assignee acting for and in their behalf, because, under the law as applied to said evidence, the said wife did not show that she was a bona fide purchaser of said lands for the full value thereof without notice of the fraudulent intent of the said husband.

FIFTH EXCEPTION.—Because on all the evidence and the bill the finding should have been for the complainant, and the report as made is contrary to law and not supported by the evidence.

Wherefore complainant prays his said exceptions may be sustained, and that on final hearing by this honorable court a decree may be rendered in his favor.

DYE AND HARRIS,
Solicitors for Complainant.

12 And afterwards, to wit, at the November term of said court, on the 15th day of February, 1879, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

This cause coming on to be heard on the exceptions to the report of L. Howland, special master of this court, and the cause having been argued by counsel, and the court being fully advised in the premises, the exceptions to the report of said master are sustained.

And now, after full hearing had of the parties in the above-entitled cause upon the bill and answer and evidence reported by the master, and upon due consideration thereof, the court finds that the allegations of the bill are true, and that the conveyance of John R. Medsker and Elizabeth Medsker, his wife, to Cyrus J. McCole, dated on the 2nd day of August, 1876, and the conveyance from Cyrus J. McCole and wife to Elizabeth Medsker, of the same date, of the southeast quarter of sec. thirty-five, township nineteen (19) north, of range four (4) east, in Hamilton County, Indiana, are fraudulent and void, and wholly without consideration as against the creditors of John R. Medsker.

And it is therefore considered, adjudged, and decreed by the court that the conveyance from John R. Medsker and Elizabeth Medsker, his wife, to Cyrus J. McCole, and the conveyance from Cyrus J. McCole and
13 wife to Elizabeth Medsker, both dated August 2, 1876, of the land hereinbefore described, be, and the same are hereby, set aside and declared null and void, and that said real estate, to wit, the southeast quarter of section thirty-five (35), township nineteen (19) north, of range four (4) east, in Hamilton County, State of Indiana, is subject to be sold for the payment of the debts of John R. Medsker, the same as if said conveyances had never been made.

And it is further considered and adjudged that the plaintiff recover of the defendant his costs herein, taxed at dollars, including the costs of L. Howland, of one hundred dollars ($100.00), which is allowed to him as special master herein.

To which order and decree the defendants except, and pray an appeal to the Supreme Court.

And afterwards, to wit, at the November term of said court, on the 28th day of March, 1879, before the honorable Walter Q. Gresham, judge, as aforesaid, the following further proceedings in the above entitled cause were had, to wit:

Come now the defendants, by Messrs. Finch and Finch, their solicitors, and file their petition praying an appeal to the Supreme Court of the United States, in the words following, to wit:

To the honorable judges of said court:

14 The humble petition and appeal of the said defendant showeth That at hearing of this case before the honorable Walter Q Gresham, sitting therein, on exception taken by complainant to the report of Livingston Howland, master in chancery, to whom the same was referred, and in the sustaining said exceptions by the court, the said defendant is much aggrieved, because, she says, that said exception ought to have been overruled, and said master's report ought to have been confirmed.

Wherefore she humbly prays an appeal to the honorable Supreme Court of the United States, and prays that her appeal may be allowed.

FINCH AND FINCH,
For Defendant.

Afterwards, on this 7th day of November, the parties come, and it being shown that the petition for an appeal from this decision of the court made in this case to the U. S. Supreme Court, filed herein on the 28th day of March, 1879, had not been acted upon by the court, it is therefore ordered that said appeal be allowed now for them, and entered accordingly.

15 5361.

Evidence returned with report of master and filed June 3d, A. D. 1878.

LEONARD WILD. Know the land in controversy at the date of conveyance. I would say its cash value was $50 per acre.

PETER CARDWELL. I had conversation with John R. Metzger about conveyance of land to his wife, (conversation objected to), I think, in Nov'b'r, 1876, in building occupied by Poe and Medsker as a salesroom in Noblesville, a short time before they closed up. I asked him how it was that they had transferred their land just at that time; that it looked like a set up job. He said he had been expecting this, and preparing for it for three months. He said that after finding that business was in the shape it was, he thought it best to do so; that he found Poe was badly involved before he went into partnership with him. Nothing further said about the land. Land worth at least 60$ at time of conveyance. Am acquainted with land; been over it. I suppose about ½ of land in cultivation is good bottom land, balance second bottom.

16 House stands on high land—may be 60 feet. I would call it bottom land. Not broken up much with swamps; 90 to 100 in cultivation. Creek divides lowland from upland. There was a considera-

ble pond, but it has been ditched and is under cultivation. Kind of slough or wet land in the woodland. Remember drain through the bottom field, but think it has been ditched since; don't think the whole bottom overflows. Small piece of land, 5 or 6 acres, near creek that can't be cultivated. NE. corner I am not acquainted with; have been over the woodland. I would still rate it at 60 per acre in 1876; not so much now. I think it would have for that in cash. It is an extra good farm, not much difference from land east of town; this is 11½ miles west of town—*last* east perhaps worth a little more. Farm has a very good dwelling-house & outbuildings; barn not very good; house remodeled & not a very old house. Live 5 miles NW. of Noblesville.

SILAS HELEN. Somewhat acquainted with the land conveyed in 1876. I would estimate it at $50 per acre; pass it every month. I was present at conversation at store alluded to by last witness before the bankruptcy. (Objected to.) I was not talking. Mr. Cardwell has related the conversation, as near as I recollect, correctly.

17 My knowledge of the land is just what I see in passing the road. Never over the land, and don't know the lines. Don't know about the swamps. Know that the fences in the low bottom have been washed away & part of the gravel road. I think it worth $50 per acre then—not worth so much now; may be not over $40. None selling. I live SE. of Noblesville some 4 miles. Not much different from east side of town—think I would rather have this.

GEORGE H. BONEBREAK. Know the land; am banker and acquainted with the land. In 1876 land in ordinary way of selling worth $60 per acre; in cash I would say, $9,000, counting money worth 12 per cent.; at 10 per cent. 2 per cent. more. It's just one mile from corporation line to east line of land, on good pike; contains 1st class corn & wheat land. Know and have hunted over all the land. Know the swamps on the land. Swamp land is in the timber. Know of one sale at $60 on time, $3,500 down—not so good land as this; can't give exact date of sale; some time before this. I would say rental value at $750. I rented one, about such a farm, for that amount. This bottom is subject to extraordinary

18 overflows. Such land is worth $4 rental per acre, including whole lands. Don't think it is quite all under fence—woodland is fenced.

C. J. MCCOLE. Am brother-in-law to Metsger. He is my wife's brother. He never made a deed of his property to me. I never paid him $8,000 for the land. He never deeded it to me. I am mistaken, it deeded to me, Aug't 2d, 1876. I paid no consideration.

(Certified copy of deed from Metsker offered, marked Ex. A.)

I conveyed to Elizabeth 2 days after. (Copy of deed offered, Ex. B.)

She paid me nothing.

(Copy of deed from America Medsker et al. to John R. Metsker, Jan'y 12, 1876, Ex. C.

Copy of agreement between Metsker heirs & John R. Metsker in partition offered & objected to, Ex. D.)

Metsker stated to me that he owed his wife money from her father's estate to about the amount of the consideration, and conveyed the land to

her through me to save her. He directed me when he delivered the deed to me to convey to her—think I delivered the deed to her attorney.

19 ISAAC S. POE. Was one of firm of Poe & Metsker on 1st of Aug't, 1876; don't know how much the firm owed. I conveyed my property to my wife in November, 1875. In August, 1876, I didn't know we were very much involved. Metsker kept the books & bought the goods. We closed from 20 to 25 November. I didn't know we were involved until a few days before this. I drew out some money in August; didn't know his deed to his wife was made until some time after. Aug't 2d I drew $250; didn't increase the debt much after that date. Don't know that Metsker knew I had deeded my land to my wife when we went together; I drew the money Aug't 2 from the bank. Metsker kept the books. When he came in he put in no money, and I was to draw out to make up. Firm debts all made after he came in. Metsker knew when I drew the money. I asked him if there was enough in bank, and he said, yes; he thought so; can't say what time in day I drew the money.

(Statement of Mrs. Metsker before the register introduced over objections. Exhibit E.)

20 Mr. POE. The indebtedness is correctly stated on the schedules.

Mr. BONEBRAKE, *Assignee:*

The amount of firm debts	5,000
Metsker's individual debts	900

I speak from memory.

Poe's individual debts about	6,000
Amount of assets at time of conveyance, individual, & partnership firm assets about	2,000
Metsker	517
Poe	150

Metsker has two lots in town worth about 200$ each, incumbered 600$ (have not accounted them anything).

I got possession in Feb'y; Poe went in November, making Metsker a party—who came in afterwards. The goods remained locked up in the store from Dec'b'r to Feb'y. Some of them of a kind to suffer waste. No provisional assignee. Their invoice in Nov'b'r was in some respects higher than mine—perhaps 10 per cent. of potatoes and apples lost, in all 175—say $17.50. Locks not secure. Some goods stolen after I took possession, perhaps $50 worth.

The debt on the 2 lots on which the 600$ mortgage is placed, is
21 between 4 & 500$. I include this in the 900 stated as individual indebtedness.

His debts above the mortgage about $500.

On the partition the land was valued by Sam'l Farley & John Burke. I heard them saying at time that they were not particular about the exact value, but to equalize it among the heirs.

Difference was paid in money. Partition in Jan'y, 1876.

(Statement of Metsker as to his wife's interest in land at that time excluded.)

He was charged more on the land on account of the lumber he had cut.

My land was rated at same rate. Jno. rec'd nor paid no money. I received money. Will received some $3,000. Land on usual terms of credit would have sold for considerably more—between $50 & 60.

(Attested copy of Will Roswell Burrows, father of Mrs. Metsker (see 6th clause), Ex. F.)

PETER PAULSIL. I know the land 10 or 12 years. Maps shown me correctly represents it. Land worth 40 to 45 dol's per acre in 1876, for cash; not over $35 now. About a mile from corporation line. Metsker's wife was sister to my wife. Land she got from her father's
22 estate was sold for $3,700. She got on distribution 29 Dec., '64, 120.40; on 1st, 1 horse, 100; cow, 75; sheep, 34; 2 beds & bedding, valued at 60$. 2d dist., 7 May, 66. Cash, 204.98. Mrs. Met'ker sold her interest in home farm, Dec. 20, 1870, for $1,000. Feb'y 2, '75, rec'd from her brother's estate $300.00, paid by Alfred Burrows. Dec. 16, '75, she rec'd from same estate $240. I paid her $120 land rent before her marriage.

Father died in fall of 1864, a year or so before her marriage.

I don't know what she did with the money. I don't know how much, if any, her husband rec'd of this money, nor the terms upon which it was rec'd.

The land she got by the will was sold to Davis & Shrylock.

(Conversation between Met'ker & wife in Oct., 1875, in regard to his indebtedness to her, offered and excluded.)

95 acres of land rec'd from her father, was sold before to Bartholomew, reconveyed, but whether to Medsker & wife I don't know.

Further evidence deferred to Monday, Feb'y 11.

Defendant moves to strike out so much of evidence of witnesses Helm & Caldwell, as refers to statements of Medsker about the sale of the land.

23 I rule these declarations incompetent as evidence against the defendant, and have not considered them in my finding.

L. HOWLAND,
Master.

Taken Feb'y 11th.

My name ALBERT BURRIS. Live at Noblesville. And in August, 1876, the land was worth $35.00 to $40.00. Sold on time; that is, one-third down and one-third in one and one-third in two years. Have known the land about 25 yrs.

LEVI H. COOK. Live in Noblesville, Indiana, and have known the land for 45 years. The fair cash value of the land in August, 1876, was about $35.00 per acre. Until about a year ago I owned land within about half a mile of this land, and am well acquainted with the land, and there is about 50 acres of waste land of the 160 acres.

C. J. MCCOLE. I have no personal knowledge of his indebtedness to his wife. I know she was one of the heirs, and there was con-

24 siderable estate coming to her. Of the farm, there is probably 90 acres in cultivation. Worth 500 per year—whole farm. Cash value of farm in 1876, not over 40$ per acre, by hunting a purchaser. There is a good deal of waste land—30 rods on east line; whole length is waste, say 17 acres. Swamp across the northwest corner is a bad one; would be expensive to drain; 30 acres. Creek cuts off some, & south of that the bluff is good for nothing but pasture.

Evidence continued April 9th, 1878.

ELISHA MILLS produced and sworn for defendant.

Have lived in Hamilton County over 30 y'rs; auditor for 4 years of that county. Have known the land in dispute 20 odd years. Own land adjoining, and lived on it 3 or 4 years. Fair cash value of land in summer of 1876 from 35 to 37 or 40 dollars per acre. Land just a mile from Noblesville; due west across the river and across Cicero Creek.

(Witness shown a map.) Would take this to be a very fair rough map of the land. Have the bottom land all overflowed. I would say the swamp land and hillside are waste land; amount to 30 or 35 acres. Hillside very steep, and not worth anything. (Map introduced in
25 evidence.) There is also 8 acres east of the house, running up along the creek, which is waste land.

Cross-ex. by Harris:

My land joins on the northeast corner. In 1876, at one-third cash, balance in 1 & 2 years, land would have sold for $40 per acre; I think 8 acres up and down the creek is mostly creek bed, & turnpike, the balance is sand bars & hill side. The part lying south of gravel road & east of Cicero Creek, is sandy, some sycamore and buckeye timber; might produce something if cleared, but not much on account of sand and wash. Track marked bottom land timbered, south of swamp is timbered sparsely; bur oak, sycamore, &c.; some soil of it was drained; 30 acres swamp has no timber on it; cat-tail flag growing on it; would be possible to ditch and drain it; rich land in swamp, but could not be made productive for a long time; the land in swamp lies higher than land around it, and is a mire or marsh; can't say whether it would produce grass even if drained; not for a long time at any rate, I would say; think I bought my land 4 y'rs ago this spring; trade for it; rated in trade at perhaps 75$
26 per acre; bottom land 40 acres clear, is poor sandy soil; not very productive; 40 bushels per acre last year; high land cleared; 30 acre is good strong sugar-tree land; the house is two-story frame, built 25 years ago; barn is only a stable; crib attached; not much mow above; road going through the farm, is a turnpike from Noblesville to Westfield;

Re-direct:

Present cash value not to exceed 35$ per acre.

Re-cross:

No, much depreciation in value in last two years.

By J. FINCH.

Crops on bottom lands for last two years have been destroyed by floods; don't think it could be levied to keep out the water from Cicero Creek; it is very low bottom; been a farmer all my life.

J. S. OSBORN sworn & examined.

Lived in Hamilton Co. 13 years, known land all that time; it is about ½ mile west of my house; been all over land; cash value in Aug't, 1876, about $35 per acre (map shown witness); fair map of land; present cash value about $30, certainly not over $35; I cultivated the 40-acre bottom tract; overflowed 3 years ago & destroyed entire crop; farmer all my life.

27 Cross-ex.

3 years ago was a very wet year; two last years I cultivated it in corn; year before last raised 28 to 30 bush. per acre; last 40 to 45 bushels; I have bought no land in neighborhood in past few years, nor talked with others about what this would sell for; I own 11½ acres.

T. J. APPLEGATE sworn & examined.

Lived at Hamilton County 25 years; known this land 12 or 15 years; live joining on east side, south of pike; own 40 acres there; cash value in Aug't, '76, not over $35. Dealing in some land during last 12 years. Present cash value about $30 per acre.

Cross-ex.

I lived where I am about a year; before that 2 or 3 years farming; owned this land something over 2 years. There is a nice piece of land, good of it bottom; I paid $60 in payments; I owned land south of town 2½ miles; sold it about year & ½ ago at $35 per acre; on east side of river; beech & oak upland; pike running to it.

In 1876 don't know that I heard any talk about the value of this particular land; very little timber on my land; 32 or 3 acres lies in
28 bottom of Cicero Creek; think my bottom is a little higher than this land; mine was under water in 1875. The swamp land could be drained, I think; when drained would not amount to much for grass; the soil is righ' light loam; to' light; no timber grows; flags; have never seen good meadow land out of this kind of swamp. There has not been many sales for cash in that county; sales usually on payment; in '76 this land would have been worth $40.00 in payments. Lands in 1876 had run down in price.

Swamp land is tough and higher than other land, & can be shaken far around. When drained is light, & dries out so as not to raise anything; in dry times would burn out. Some of Metsker land is between me & the creek; it overflows first. The gravel road greatly protects mine, and makes it more valuable.

ELIZABETH MEDSKER sworn.

Am wife of Jno. R. M ; been married 13 years next Aug't; father's name Roswell Burrows.

I got from my father's estate a horse, saddle, & bridle, $130; cow, $75; some sheep, don't remember number, worth about $30; 2 beds & bedding, $60 to $70; about $122 or 3 in money, and 115 acres of land, 2 or 3 miles
S. W. of Noblesville; we sold this 20 acres for $700; and the
29 other land for $3,000. We first sold the larger piece to Bartholomew for $3,200; I got $200; then he failed to pay, & we sold again to Schryock for $3,000; I also got my share of the sale money after-

wards from my father's estate, upwards of $200. Sale to Bartholomew in 1871; got the money Christmas; sale to Schryock in May, 1872; got the money in payment, but don't remember how; sold the 20 acres to Davis & Hawkins, in February, 1867. I sold an interest in home farm to Alfred Burrows Dec., 1870, for 1,000$; he was father's executor; don't remember how much he paid me as executor out of personal estate. From my brother's estate in Feb'y, 1875, 300$, and Dec., 1875, $200 from brother Perry's estate, Alfred Burrows administrator.

I loaned this money to my husband at different times; don't know how long I kept it, altogether; I let him have $5,700; last I let him have was from my brother's estate; think about a week after I received it.

There was one time we had some trouble & I wanted my money. He said he hadn't the money & would have to deed me the farm. This was a year or year & ½ before he did deed it to me; didn't know why he didn't do it then. When he went into partnership with Poe I told
30 him he would have to pay me if he did so. Said he could not do it, but would deed me the farm. This was 4 or 5 months before the deed was made. I told him several times I wanted the money & he always said he had nothing but the farm to give me; the last time about a week or 2 weeks before the deed was made; living on the farm at that time. He was in business with Poe at Noblesville. (All these conversations objected to.) Mr. Cottingham brought the deed to me to sign to McCole on the 2nd of the month, and two or (3) or three or four days I got the deed from McCole. These deeds shown the witness & identified. I don't remember anything about seeing the deed to me. I got this deed the 4th of the month. The deed I signed was on the 2d, & I gave it back to Cottingham & he took it back to town. I don't think he could have sold the farm in 1876 for more than $30 or $35 per acre; in 1875 the crop was overflowed twice and destroyed. Think it was also overflowed in 1876, but am not positive about it. The deed was made to me to pay the debt my husband owed me. No understanding that I was to deed back the land to him at any time. At the same time I got the deed I supposed my husband to be in good circumstances. I first heard he was em-
31 barrassed 2 or 3 weeks before they closed the grocery, late in the fall. At the times I let my husband have money I told him I would loan it to him, provided he would pay it back some day. He said he would pay it back. I thought the grocery was making money when the deeds were made. When I went into the grocery he was not much in debt. I understood he had plenty to pay his debts then. I got about $450 more money than I let my husband have. I used this for myself.

C-X. by HARRIS:

We moved on the farm in fall of 1865. He got the land from his father's estate. He was farming before he went into the grocery. Sold some reapers, but farming was his business. He didn't keep an agricultural implement store; bought no other land; rebuilt the house as much as 7 years ago. Cost $1,000 at least. I loaned him the money. My share in the home place was used for this purpose. I will have to look at the papers to see when the sale was made to my brother; it was in 1870. The house was repaired in fall of 1870. I know the money was to be used for that purpose. The paper I hold in my hand and look at is a mem. of the transactions made by my husband since my examination before

32 the register; first saw the paper three months ago; made at my house from receipts & deeds we had; don't remember who was present when it was made besides myself & husband. I have had the paper ever since; repairs made in fall of 1871, September; Malory was the carpenter; dead now; 115 acres sold in two parts, 20 acres Feb'y 9, 1867, to Hawkins & Davis; looked at a paper for this date. Mr. Metsker made this paper also, about the same time as the other.

20 acres sold.

None of the 700 from H. & D. came into my hand nor notes; sale was in June, I think, but don't remember.

The money was paid to my husband, I think; the remainder of 115 acres was sold in May; don't remember the year without looking at my paper; have forgotten the year. Schryock paid me none of the money; it was sold on time; don't know terms; none of the notes given to me; no part of $3,000 was paid to me at any time. Father died in 1864; from this time to sale of land to Hawkins & Davis & Bartholomew several families lived on the farm. They rented from us; some paid money, some grain rent. Bartholomew paid money; don't remember others; don't remember what was done with grain rent; it was not sold and money paid to me. I had no stock of my own on the farm to

95 acres sold.

33 feed the grain to; no account kept of the rents. My husband paid

$200.

the taxes. The $200 was not paid to me by Bartholomew. I never saw him ab't the sale. I told Mr. Metsker to attend to that for me. He was the to do it. I know he paid the $200 from what my husband told me; that's all I know about it; that's good enough. We both talked to Hawkins & Davis about the sale to them; don't know where Schryock lived; yes, he lived a mile south of our house when the sale was made. We all talked together. I had no talk with him except through my husband. I only 'now know it was closed up from what my husband reported to me. I sold the mare my father gave me and bought another, my husband sold her for me; got the other one yet; sold the cow before I married; loaned the money to my brother; afterwards to my husband, in 1865, winter; brother repaid the money to me. I told my husband I would loan it to him, but would not give it to him; he wanted it to improve the farm, repair fences, ditch, set out orchards, &c.; let him have $125 at that time. I took no note nor made any mem. on a book. I know the date receiving the money; I gave receipts to my brother. I just remember the dates; don't know that I looked at receipts for dates. About a year from that, I gave him the next money; my share of the

34 sale money of my father's estate.

Alfred Burrows was the executor. He paid my share to me at my house. Husband not there. I put the money away. Can't say how long I kept it.

I put it away in drawer.

I let my husband have it—no note nor mem. on book. Sale money was paid me ab't December of 1865, by my brother. Husband said he wanted the money to still be fixing up the farm. Can't tell when my husband got the Davis & Hawkins money except from what he told me. He used the $700 in improving the farm. Had to do a good deal of ditching, reset fences every year. Kept one hired hand; sometimes two. Boarded in the house; paid them 18 to 20 per month. Next money I let husband have after Davis & Hawkins money was the money from Schryock, I think. He used this money on the farm. He was engaged in no

other business—not shipping stock. He spent the money setting out fruit trees, ditching, setting fences, &c. Set 200 or 300 trees. Had to do it several times. Don't know the amount or number ditches on the farm. He has been ditching every year. One ditch runs through the cornfield northwest. Don't know its length or size. One in the field west
35 of the farm; never saw this. Ditched a low place in the wheat field—tile ditch. Can't tell how long or size of tile. About size of tin spout. Don't know where he did the other ditching. Has been ditching for some weeks back. He pays for the ditching done now. His paid hands do the ditching. After the 3,000 I next let him have money after youngest brother Perry died. Brother gave me check for the money. One I drew the money on, other my husband drew. He brought the money home, but did not pay it into my hands; I told him I would lend it to him. This was $300. The check I drew was $245. I kept the $45 & let my husband have the $200. Don't remember where I let him have it, whether at home or in town. Don't remember whether he was with me or not when I drew it. He used the $200 also on the farm and for provisions for the family, I suppose. The $300 he drew I can't say just say what he did with, spent it on the farm, though. The $1,000 from home farm was paid in by my brother or to my husband, I don't remember which; I took no note nor made no charge on my book ag't my husband on account of any of these sums of money. I did'n take the deed from McCole to me to the recorder's office. Callingham brought the deed to McCole
36 to me to sign at home. My husband was not at home. He was at Noblesville. Cottingham no relation to either of us. In the boot and shoe business. Cyrus J. McCole is my brother-in-law; married my husband's sister. Lived in Noblesville. Nobody came with Cottingham to house. Didn't know he was coming that day; wasn't expecting him. I can't tell what he said when he came in. He laid the deed on the table and said Mr. Metsker said he owed me the money & would have to deed me the farm to pay it, something like that. Husband had talked about it a week or two before. Mr. Cottingham read over the deed to me before I signed it. I saw it was a deed to McCole, I didn't stop to inquire what it was for. I signed before my husband, I think, and gave it to Cottingham. I saw nothing of it till my husband brought it back and gave it to me. Can't say how long after it was. Have had it ever since. It wasn't long after that my husband brought it and gave it to me. I have no way of *of* fixing the day. McCole was in the dry goods business. I was present when the deed to me was made; can't state the time it was delivered to me. I didn't get from McCole. I have kept both
37 deeds together since. He has a drawer & I have a drawer. It has not been out of my possession since I got it. I got it 2 or 3 months before he went into bankruptcy—may be longer; can't say how long.

Mr. Medsker paid for recording, I suppose. I wasn't there. He went into grocery with Poe, in Feb'y, 1876, I believe. I had not heard of my husband's being sued before he went into bankruptcy; crop on farm at time deeds were made I can't tell what has been done with. I didn't sell & get the money in '76; don't think there was much to sell. The water took most of it. After Cottingham was out with deed for me to sign I had no conversation with my husband ab't the deeds; don't know how much

money he put in the grocery; don't know what he agreed to put in. Poe was in business, and he went in with him as partner; remember his being examined in April, in Dye & Harris' office. I was sworn and signed the examination. Shown her signature and identifies it. I tried to answer correctly; don't remember that I answered anything wrong. I have talked some with my husband since, not much. He made out these account papers; I have look' at since that time. I have kept them since. I brought them down to-day to remember some of the dates by. I
38 kept them because I thought they might be useful.

The trouble with my husband did not grow out of these money transactions. He paid the taxes last year on the farm. When the land was sold to Bartholomew there was a deed made to him. We have his deed conveying back to both of us, my husband & myself. I first saw the deed from Bartholomew back to us yesterday. We got it from Schryock, to whom we afterwards sold the land.

Re-ex.:

When we first went on the farm it was in bad condition; had to reset all fences before anything could be raised on it. I gave my brother receipts for money & have seen them since, & got the dates from them & other papers which are are in the mems. I have used. We have a couple of lots in Noblesville. They came in as a part payment on the 95 acres from Shryock; don't remember the price they were put in at; deed shows $700. Since I got the deed some corn ground has been leased to Osborn in my name; written lease. Osborn & I signed the papers. I was expecting the deed to be brought me to sign, but not the particular day Cottingham came. I didn't mean in my examination to say that land was given me to secure me. I took it in payment of the debt. I
39 wasn't able to go to town the day Cottingham brought out the deed. I was near confinement.

Re-X:

I didn't know that the lots in Noblesville were being conveyed to my husband. I thought the lots were in my name until I was here last spring. Before Cottingham came out I don't know that I had talked with my husband about what the farm—or that any price had been agreed upon. Don't know that he bought any stock on the farm with the money he got from me. The Osborn corn rent was hauled home and put in the crib, & fed to stock. My husband gathered it. I don't hire him, but I hire the other hands.

ALBERT H. LACY. Was born in Hamilton County. Known the land for several years. In Aug't, 1876, cash value, I suppose, some $40. I hardly know. There are many defects in the land. Worth now from $30 to $35. I own land near south & southwest. I paid 33$; not quite so near town as this.

(Original deeds from Medsker & wife to Cole, and from Cole to
40 Mrs. Medsker introduced, marked Ex's G & H. Copies of 2 receipt' of Mrs. Medsker introduced, marked Ex. J. Map of land referred to in testimony introduced, mark' Exhibit K.)

Evidence taken April 18th, 1877.

HENRY KINSEY. Am farmer. Am acquainted with farm; have been all over it. Was there last fall and saw it. Known the land 8 or 9 years. Soil is a good. There is swamp N. W. of house on a sort of branch; herd grass grows on it; could be drained. Good farm-house; small ordinary frame barn; fences in good condition. Upland is clay soil—not the poorest clay soil. Sugar and walnut. August, 1876, land worth $50 per acre, cash, one & two years' 6 per cent. I asked Medsker what he would take for the farm while he was in the grocery. He said 70 or 75 per acre. I told him if he would price it at 60 I would write to a man that wanted to purchase, and he said he wouldn't sell it unless he got that for it.

(Def't moves to strike out so much as relates to conversation and offer to Medsker.)

At a *cost* sale I would put the same at that time.

By FINCH:

41 Been on place 2 or 3 times; never over it all but the one time last fall. I made no offer to Medsker for the land; asked him to price it.

When payments bear interest at 10 per cent. I would regard equivalent to cash; 6 per cent. perhaps not.

(Witness shown the map Ex. K.) Represents the land correctly. I think I was not on the N. W. corner, but I have seen it from adjoining lands; wouldn't think the swamp was 30 acres, but didn't go over it enough to judge the amount; noticed the general character of it; I couldn't just say how much of the land is waste; much could be cultivated by draining. There is a strip of flag-swamp in the centre, but timber grows up close to it; it is a skakey quag; can stick a rail into it five feet.

* * * * * * *

If the swamp was ditched it would be a good grass land, if not tillable.

42 *Exhibit A filed with master's report.*

This indenture witnesseth that John R. Metsker and Elizabeth W. Metsker, his wife, of Hamilton County, in the State of Indiana, convey and warrant to Cyrus J. McCole, of Hamilton County, in the State of Indiana, for the sum of eight thousand dollars, the following real estate in Hamilton County, in the State of Indiana, to wit:

The southeast quarter of section thirty-five (35), township nineteen (19) north, of range four (4) east, containing one hundred and sixty-two (162) acres more or less.

In witness whereof the said John R. Metsker and Elizabeth W. Metsker, his wife, have hereunto set their hands and seals this second day of August, A. D. 1876.

ELIZABETH W. METSKER. [SEAL.]
JOHN R. METSKER. [SEAL.]

STATE OF INDIANA,
Hamilton County, ss:

Before me, Henry A. Cottingham, a notary public in and for said

county, this 2d day of August, 1876, comes John R. Metsker and Elizabeth Metsker, his wife, and acknowledged the execution of the annexed deed.

Witness my hand and notarial seal.

HENRY A. COTTINGHAM, [SEAL.]
Notary Public.

43 The above is a true copy recorded August 21st, 1876.

THOS. E. BOYD, *R. H. C.*

STATE OF INDIANA,
Hamilton County, ss:

I, the undersigned recorder in and for the county of Hamilton and State of Indiana, do hereby certify that the above and foregoing is a true and complete copy of the deed recorded in my office in deed record No. 22, page 415, as the same appears of record.

In witness whereof I have hereunto set my hand and the seal of said office this 31st day of January, 1879.

[SEAL.] THOS. E. BOYD, *R. H. C.*

Exhibit B filed with master's report.

This indenture witnesseth that Cyrus J. McCole and Elizabeth McCole, his wife, of Hamilton County, in the State of Indiana, convey and warrant to Elizabeth W. Metsker, of Hamilton County, in the State of Indiana, for the sum of eight thousand dollars, the following real estate in Hamilton County, in the State of Indiana, to wit: The southeast quarter of section thirty-five (35), township nineteen (19) north, of range four (4) east, containing one hundred and sixty-two (162) acres, more or less.

44 In witness whereof the said Cyrus J. McCole and Elizabeth McCole have hereunto set their hands and seals this 4th day of August, A. D. 1870.

C. J. McCOLE. [SEAL.]
ELIZABETH McCOLE. [SEAL.]

STATE OF INDIANA,
Hamilton County, ss:

Before me, Henry A. Cottingham, a notary public in and for said county, the 4th day of August, 1876, comes Cyrus J. McCole and Elizabeth McCole, and acknowledged the execution of the annexed deed.

Witness my hand and notarial seal.

HENRY A. COTTINGHAM, [SEAL.]
Notary Public.

The above is a true copy recorded August 29th, 1875.

THOMAS E. BOYD, *R. H. C.*

STATE OF INDIANA,
Hamilton County, ss:

I, the undersigned recorder in and for the county of Hamilton *county*

of Hamilton and State of Indiana, do hereby certify that the above and foregoing is a true copy of the deed recorded in my office in deed record No. 22, page 450, as the same appears of record.

In witness whereof I have herewith set my hand and the seal of said office this 31st day of January, 1878.

[SEAL.] THOS. E. BOYD, *R. H. C.*

45 *Exhibit C filed with master's report.*

This indenture witnesseth that America Metsker, Lony G. Metsker, Sarah Metsker his wife, Hamilton Metsker, Marshall Metsker, Elizabeth McCole and Cyrus J. McCole her husband, of *of* Hamilton County, in the State of Indiana, convey and quit-claim to John R. Metsker, of Hamilton County, in the State of Indiana, for the sum of ten thousand two hundred & seventy-five dollars, the following real estate, in Hamilton County, in the State of Indiana, to wit:

The southeast quarter of section number thirty-five (35), township number nineteen (19) north, of range four (4) east; containing one hundred and sixty-two acres, be the same more or less.

In witness whereof the said America Metsker, Lony G. Metsker, and Sarah Metsker his wife, Hamilton Metsker, Marshall Metsker, Elizabeth McCole and Cyrus J. McCole her husband, have hereunto set their hands and seals this 12th day of January, A. D. 1876.

AMERICA METSKER. [SEAL.]
MARSHALL METSKER [SEAL.]
HAMILTON METSKER. [SEAL.]
LON G. METSKER. [SEAL.]
SARAH A. METSKER. [SEAL.]
C. J. McCOLE. [SEAL.]
ELIZABETH McCOLE. [SEAL.]

STATE OF INDIANA,
Hamilton County, ss:

Before me, John Balk, a justice of the peace in and for said county,
46 this 12th day January, 1876, America Metsker, Lon G. Metsker, Sarah A. Metsker his wife, Hamilton Metsker, Marshall Metsker, Elizabeth McCole, C. J. McCole her husband, and acknowledged the execution of the annexed deed.

Witness my hand and seal, this day of , 187 .

JOHN BALK, *J. P.* [SEAL.]

The above is a true copy, recorded January 14, 1876.

THOS. E. BOYD, *R. H. C.*

STATE OF INDIANA,
Hamilton County, ss:

I, the undersigned recorder in and for the county of Hamilton, and State of Indiana, do hereby certify that the above and foregoing is a true and complete copy of the deed recorded in my office, in deed record No. 21, at page 450, as the same appears of record.

In witness whereof I have hereunto set my hand and the seal of said office this 31st day of January, 1878.

THOMAS E. BOYD, *R. H. C.*

Exhibit D filed with master's report.

Be it known that in miscellaneous record No. 1 of the records in the office of the recorder of Hamilton County, at pages 495 & 496 thereof, appears of record the following indenture of agreement, to wit:

The agreement entered into this 12th day of January, A. D.
47 1876, between Amerika Medsker, Lony G. Medsker, and Elizabeth McCole, wife of Cyrus J. McCole, witnesseth: 1st. That said parties are the only heirs at law of Henry Medsker, late of Hamilton County, Indiana, deceased.

2d. That as such heirs, said parties have mutually agreed each with the others to share equally in the entire estate of said decedent, except the said America Medsker is to have the $500.00 in addition to which is absolutely entitled against creditors as the widow of said decedent.

3rd. That John Burk and Samuel Farley, chosen for that purpose, have partitioned the real estate of which said Henry Medsker died the owner, among said parties, in pursuance of which said petition each of said parties have this day executed proper deeds of conveying to each of said parties the real estate so set off to each of said parties.

4th. That the value of the portion of said real estate so assigned and conveyed to each of said parties is as follows, that is to say:

To said America Medsker	$8000 00
" " John R. Medsker	10,275 00
" " Elizabeth McCole	7,320 00
" " Hamilton Medsker	6,915 00
" " Marshall Medsker	6,915 00
" " Lony G. Medsker	8,100 00

5th. That in consideration of the conveyance of real estate of the value of ten thousand two hundred and seventy-five ($10,275.00)
48 to said John R. Medsker, by the other parties, he hereby releases and quit-claim all his remaining interest in and to all the remainder of the real and personal estate of which said decedent died the owner, to the other parties hereto.

6th. And in consideration of the foregoing settlements, agreements, and the conveyance above referred to, the said America, Lony G., Hamilton, and Marshall Medsker, and said Elizabeth McCole and her said husband, hereby mutually agree and bind themselves each to the other, that each of said parties is first to be paid out of the personal estate of said decedent, and out of the proceeds of the real estate of said decedent not this day conveyed in severalty by said parties, an amount which, added to the value of real estate as herein stated, will be sufficient to make the shares of each amount to the sum of $8,100.00, and then the remainder of the real and personal estate of said decedent is to be equally divided between said parties hereto, except John R. Medsker, who has already, as herein shown, received his full portion of the real and personal estate of said decedent; and further, said America Medsker is to have said sum of $500.00 in addition as herein shown.

In witness whereof we have hereunto set our hands and seals
49 the 12th day of January, A. D. 1876.

(Signed) AMERICA MEDSKER. [SEAL.]
L. G. MEDSKER. [SEAL.]
MARSHALL MEDSKER. [SEAL.]
JOHN R. MEDSKER. [SEAL.]
HAMILTON MEDSKER. [SEAL.]
ELIZABETH McCOLE. [SEAL.]
CYRUS J. McCOLE. [SEAL.]

The above and foregoing is a true copy recorded this 18th day of April, 1876.

THO'S E. BOYD, *R. H. C.*

And be it further known that in said miscellaneous record No. 1, in the office of the recorder of said Hamilton County, at page 497 thereof, appears of record the following indenture of agreement, to wit:

Agreement between heirs of Henry Medsker.

In order to avoid all controversy in the settlement of the estate of Henry Medsker, deceased, we, whose names are hereto attached, make the following agreement as to our respective shares in said estate; that is to say, we select Samuel Farley, John Burk, and commissioners to make partition of the real estate of said decedent wherever situate, and we hereby agree to set off the one-sixth part in value of said real estate to each of the undersigned, which we severally agree to accept as our respective shares of said real estate, and we hereby, in consideration of the foregoing agreement, *and* bind ourselves each to each of the others
50 the shares so to be set off and assigned to each of us by said commissioners as aforesaid; and further, in consideration as aforesaid, we agree that the undersigned, America Medsker, is to have five hundred dollars ($500.00) in value of the personal estate of said decedent, which amount she has already selected in household goods and money, and one-sixth part of the balance of such personal estate after the expenses are paid for her share of the same, which she hereby agrees to accept in full of such share. All in consideration as aforesaid.

(Signed) AMERICA MEDSKER.
CYRUS J. McCOLE.
MARSHALL MEDSKER.
JOHN R. MEDSKER.
HAMILTON MEDSKER.
LONY G. MEDSKER.
ELIZABETH McCOLE.

STATE OF INDIANA,
Hamilton County, ss:

I, the undersigned, recorder in and for Hamilton County, Indiana, do hereby certify that the foregoing is a true copy of the record found in miscellaneous record No. 1, page 495, & 496, & 497, as per above stated.

In witness whereof I hereunto subscribe my name and affix my official seal this 31st day of January, 1878.

THO'S E. BOYD, *R. H. C.*

51 EXHIBIT E.

Mrs. Metsker's statement.

TUESDAY MORNING, *April 10th.*

Mrs. METSKER called, sworn, and examined by Mr. DYE:

Q. What is your name?
A. Elizabeth Metsker.
Q. What is your husband's name?
A. John R. Metsker.
Q. When were you married?
A. On the 3d of August, 1865.
Q. What property did you own at the time of your marriage?
A. Do you mean all?
Q. Yes.
A. It would amount to between six and seven thousand dollars.
Q. What shape was it in?
A. It was in good shape, so far as I know.
Q. Describe what it was.
A. I had 115 acres of land.
Q. Where did that land lie?
A. About three or four miles west of Noblesville, Hamilton County, Indiana.
Q. Was it all in one tract?
A. No, sir.
Q. What became of that land?
A. I sold it.
Q. To whom did you sell it?
A. Twenty acres to Hawkins & Davis; ninety-five I sold to Mr. Bartholomew, and when he found out he could not pay it he gave it
52 up, and then sold it to Mr. Shryop.
Q. How much did you get for the land that you sold to Hawkins & Davis?
A. 700 dollars in money.
Q. Did you get all cash, or some money and some notes?
A. All cash, so far as I know.
Q. Do you know whether it was all cash or not?
A. No, I do not.
Q. Who transacted this business for you?
A. My husband.
Q. Whatever was obtained for the land he got?
A. I let him have it.
Q. Did he get it of the men?
A. Yes, sir.
Q. It didn't pass through your hands at all?
A. No, sir.
Q. Did he give you any notes?
A. No, sir.
Q. Did you keep a separate account of that money and his?
A. No, sir.
Q. He was head of the family, and he transacted the business, and got the money?

A. Yes, sir; I loaned it to him.
Q. Did you have it at all? Didn't it come through his hands?
A. No; it came through my hands.
Q. To whom did you sell it, did you say?
A. To Hawkins & Davis.
Q. Did they pay the money into your hands?
A. No, sir.
53 Q. Did you see the money paid?
A. No, sir.
Q. Do you know whether they paid all cash or paid money and some notes?
A. I could not tell that.
Q. Did your husband tell you whether he got all cash, or money and notes?
A. No, sir.
Q. He transacted that business, didn't he?
A. Yes, sir.
Q. You trusted your husband?
A. I thought he was capable of doing the business for me.
Q. You let him manage the whole matter?
A. Yes, sir.
Q. When the other land was conveyed to Bartholomew do you know whether he paid you any money—the first time it was conveyed?
A. No, sir.
Q. When he reconveyed the land to whom did he deed it; to you or your husband?
A. I don't know.
Q. Don't you know when Bartholomew deeded the land back he deeded it to your husband and not to you?
A. I don't know who the deed was made to.
Q. Was your husband in the habit of telling about his money matters?
A. No, sir.
Q. Did he keep a book account with you?
54 A. No, sir.
Q. Did he ever have any kind of an account-book in which the account between you and your husband was set down in any sort of shape?
A. No, sir.
Q. Did you ever see such a memoranda, account-book, or paper?
A. No, sir.
Q. And all you know is that you had so much property, and your husband was allowed to sell it and take the proceeds?
A. Yes, sir; I allowed him to sell it.
Q. And there never was any writing at any time between you about the settlement?
A. No, sir.
Q. You never saw any account made out by your husband and given to you in which he promised to pay you any money?
A. No, sir.
Q. You don't know how much of your money he ever got?
A. I know pretty near it.

Q. Did he ever promise you that he would pay you any particular time?

A. We had no time set.

Q. You had no particular time set?

A. No; he said he would pay me some time.

Q. When did he say that?

A. When I let him have the first money.

55 Q. You didn't let him have it; he got it of the men the land was sold to, didn't he? Is it not true that he got the money of the men to whom he sold the land?

A. I suppose he did.

Q. Did he tell you how much he had got?

A. I don't remember that he did.

Q. He didn't tell you how much he would pay you back then?

A. He said he would pay me back whatever I let him have, whatever the land would come to.

Q. What was he to do with the money?

A. He took it to improve the farm we lived on.

Q. Do you live on that farm now?

A. Yes, sir; we have always lived there since we kept house.

Q. Did he say he wanted it to improve the farm?

A. Yes, sir; the farm had to be improved before we could live on it, or do anything on it very much.

Q. He didn't tell you when he would pay it back?

A. No; there was no time set.

Q. How did this deed come to be made to you at the time it was made?

A. It was made to me to make me safe for what money of mine he had used.

56 Q. When was that made?

A. On the 2d of August.

By Judge FINCH:

Q. Do you know what each one of those pieces of land brought when sold?

A. Yes, sir.

Mr. DYE, resuming:

Q. How did you happen to have it made at that time?

A. I told you.

Q. Why hadn't you had it made before that?

A. I don't know; he just neglected it, that is all I know about it.

Q. When was it that you had any talk about making a deed first?

A. He has talked about letting me have the farm ever since we have been married.

Q. How much of the farm was he going to let you have?

A. All of it.

Q. What was he going to let you have it for?

A. Because I had loaned him money to use.

Q. He was going to give it to you for that reason?

A. It was to pay me back for what I had let him have.

Q. What business was your husband engaged in before he made that deed to you?

A. Farming.

57 Q. He went into the grocery business before he made the deed, didn't he?
A. Yes, sir; he went into that.
Q. He didn't make the deed till after he had been in the grocery business, did he?
A. No, sir.
Q. Did he owe anybody else besides you at the time he made the deed to you?
A. He owed, maybe, a few dollars, I guess.
Q. To whom did he owe a few dollars?
A. I could not tell you that.
Q. Do you know any one?
A. He owed some things there at Noblesville; our store bill for one thing.
Q. How much was that?
A. I couldn't tell you.
Q. Have you any idea?
A. No; it isn't very much though, I don't think.
Q. Did he owe anything else?
A. We owed a small bill.
Q. What else?
A. Nothing that I know of.
Q. Was he not a member of the firm of Poe and Metsker?
A. I don't know anything about that at all.
Q. Do you know whether you did at that time or not—at the time that deed was made?
A. I told you I didn't.
Q. Did you have any talk with him on this subject?
58 A. No, sir.
Q. You knew that he was in the business; didn't you?
A. Yes, sir.
Q. Did you know upon what terms he had gone in upon?
A. No, sir; I didn't.
Q. Did you know that the firm was in debt at the time he made the conveyance to you?
A. No, sir; and I don't think he did.
Q. What did he tell you about that?
A. He told me he thought the firm was making money at that time.
Q. Didn't he tell you that the firm was in debt at that time?
A. He told me that they owed some, but that he thought the firm was making money.
Q. How much did he tell you they owed?
A. He didn't tell me.
Q. What did he say about owing some?
A. That is all he said.
Q. What did he say he was making the deed for?
A. To make me safe for what I let him have.
Q. State what he said was the reason of his making the deed at that time?
A. He didn't state any reason to me.
Q. Did you ask him to make the deed?
A. No, sir.

Q. How did it come to be made just at that time?

59 A. He told me he was going to let me have the place, as he had told me before.

Q. Who had that deed—who was the notary that it was acknowledged by?

A. Do you mean who wrote it out?

Q. Yes.

A. Mr. Cattingham, I believe.

Q. Did he live at Noblesville?

A. Yes, sir.

Q. What was said at the time it was executed; give us all the conversation which took place?

A. I have told you all I know about it.

Q. How much did he owe you at that time?

A. He owed me well on to 7,000 dollars.

Q. What was that for?

A. For the money I let him have.

Q. How much money did you let him have?

A. I let him have the money I got for this land.

Q. How much?

A. I got 7,000 dollars for the twenty acres, and 3,200 for the ninety-five; and then, on the 20th of December, 1865, I let him have 125 dollars, and on the 7th day of May, 1866, 175 dollars, and on the 7th day of Feb., along toward the first of February, I let him have 1,000 dollars, my interest in my mother's lands.

Q. What other sums did you let him have?

60 A. In Feb., 1875, I let him 300 dollars, and in Jan., 1876, I let him have 200 dollars.

Q. Is that all?

A. That is all, if I gave it in correctly.

Q. Where did this money come from that you gave him?

A. It was for land.

Q. You sold your land, a part of it, for 700 dollars, and the rest of it for how much?

A. 3,200 dollars.

Q. Where did the rest of the money come from?

A. I had between 400 and 500 dollars of my father's estate.

Q. What did you do with that?

A. I let my husband have it.

Q. When did you get that?

A. My father died in 1864, and I got it in 1865, some time.

Q. How much did you get from your father's estate?

A. Between 400 and 500 dollars in money.

Q. You don't recollect just how much?

A. No, sir.

Q. Was the amount not 324 dollars?

A. No, sir; it was more than that.

Q. Where did you get the rest of it.

A. My brother died and I got my part of his estate; I got 300 dollars at one time and 200 at another; I kept $45 and let him have the balance.

Q. Where did you get the rest?

A. 1,000 dollars, my interest in my mother's farm.

61 Q. When did you get that?

A. In 1871.

Q. What else did you get?

A. I think that about fills the bill.

Q. You never used any of this yourself?

A. I used some of it.

Q. How much did you use?

A. 75 dollars.

Q. Is that all?

A. Yes, sir.

Q. You have some personal property round about your home where you have been living; a horse and a sewing-machine, and so forth?

A. Yes, sir.

Q. Were not they bought out of the money received from your father's estate?

A. No, sir; he gave me a horse, and I sold it and bought me another one.

By Judge FINCH:

Q. How far back did your husband talk about conveying to you this land?

A. Two years ago.

Q. Have you ever urged him to do it?

A. No, sir; I never asked him; but I told him once I would like to have what he owed me.

Q. When was that?

A. On the 18th of August, 1875.

Mr. DYE (resuming):

Q. How did that come; how did it happen that you had that conversation?

62 A. We had a little trouble for one thing, and I told him I would like to have what he owed me.

Q. At that time did he owe you all that he does now, or did when he conveyed this land?

A. I let him have 200 dollars since.

Q. He owed you all but the 200 dollars at that time?

A. Yes, sir.

Q. What did he say?

A. He said he couldn't pay it; that he had had bad luck on the farm; that the creek had overflowed the land, and he had lost his produce.

Q. Was it a fact?

A. Yes, it was; that year the bottom land overflowed seven times.

Q. What was said about that time about conveying land to you?

A. He said that if he could do it any other way he would make a deed to the place and make me safe; that is, if he seen he could not pay it in any other way. There was no more said till this deed was made.

By Mr. DYE:

Q. This deed was to make you safe?

A. He agreed to make me safe before that.

By Judge FINCH:

Q. Was it a mortgage to make you safe, or a conveyance in full?

63 A. He said he would make a deed to make me safe.

Q. At the time it was made, what time in the day was it?

A. What time in the day did I sign the deed?

Q. Yes.

A. About 10 o'clock in the morning.

Q. Who was there?

A. Mr. Cottingham.

Q. Who else?

A. No one else.

Q. Was Metsker there?

A. No, sir; he was not there.

Q. Cottingham came to write out the deed at your house?

A. No, sir.

Q. Who made the deed to you that Cottingham made you; whose name was to it?

A. I don't remember.

Q. How long before, if at all, did Metsker talk to you about making this deed; was it before this morning when it was made?

A. Yes, sir; he had talked about it before that.

Q. How long before it was done?

A. I don't know just how long.

Q. State if there was any conversation between you about the business, or about your relations to each other in regard to money about the time he went in with Mr. Poe.

A. I don't understand you.

64 Q. At the time he went in with Poe, what was said between you and him about his going in?

A. There was nothing that I remember; I never wanted him to go in to it.

Q. Did you tell him so?

A. Yes, sir; I told him I didn't want him to go into it.

Q. At what time was it he said something about making you a deed before he did it, or was it after he went in with Mr. Poe?

A. He told me he would make me safe before that.

Q. Did he tell you that afterwards?

A. Yes; he said if I was not satisfied he would make me safe.

Q. Did he tell you how he would make you safe?

A. Nothing more.

Q. Than by the deed?

A. Yes, sir; by the deed.

Q. You said something just about the time this deed was made about Mr. Metsker saying that they were making money; what else did he say about the condition of the firm, if he said anything?

A. He didn't say anything to me, only he said that he thought that the firm was making money at that time.

Q. Did he say anything about owing anything?

65 A. He said that he owed some, but that he had enough property to pay his individual debts.

Q. How about the firm?

A. He didn't tell me about the firm owing anything.
Q. It was about his individual debts?
A. He said he owed some, but he had enough to pay it.
Q. Was there any statement made or conversation had, at any time within two years, about how much he owed you, or was there anything put down on paper, that you know of?
A. Nothing more than at the time I told you that I told him I would like to have what was owing me.
Q. What did he do then?
A. He made a memoranda of it then.
Q. Was this two years ago?
A. It will be two years next August.
Q. What shape was that memoranda in?
A. I don't know. I didn't see it myself; he told me about it. He put it on a small day-book, but it has got misplaced, and we could not find it.
Q. Did he state how much it come to then?
A. He counted it up and told me.
Q. Did he tell you whether he put down each sum separately or not?
A. He didn't tell me that.
66 Q. He counted it up, however, and told you how much it amounted to?
A. Yes, sir; and as he could then.
Q. That is the time you had this trouble?
A. Yes, sir.
Q. At the time the deed was made was there any account about how much he owed you?
A. It was between 5,000 and 6,000 dollars.
Q. Besides interest?
A. Yes, sir.

By Mr. DYE:

Q. Was there any account made of it at the time, any footing of it?
A. Not that I know of.

By Mr. FERDICK:

Q. Why were you opposed to his going into the store?
A. Because I didn't think he had any business there.
Q. Why not?
A. Because I thought he had enough to do to attend to his farm.
Q. Had you any other reason for being opposed to it?
A. No, sir.
Q. What do you mean by saying you thou't he had no business there?
A. Because I thought he had enough to do to attend to the farm and land at home, I told you.
Q. You thought he could not well run the farm and the store too?
67 A. Yes; I told him I was sure he would lose money at one place or the other.
Q. You were afraid the store would break him up?
A. I didn't know what might happen.

By Judge FINCH:

Q. You thought he had too many irons in the fire?

A. Yes, sir.

Mr. FERDICK resuming:

Q. Did your uneasiness about that matter continue as he went on with the business?

A. I did not let it give me any uneasiness.

Q. You never knew anything about how the business was running?

A. No, sir.

Q. Did you see this deed immediately before it was written out?

A. Which deed?

Q. The deed that was made to you for the land.

A. I signed it.

Q. You mean the deed to McCole, you signed that.

A. I thought that was the deed you were speaking about.

Q. Did you see that deed before it was written out; or was it written out in your presence?

A. It was already written, I think; I would not be certain it was
68 not written in my presence.

Q. Did you know that the deed was going to be made at that time?

A. No, sir; not till it was brought to me to sign.

Judge FINCH (to Mrs. Metsker):

Q. What did you understand it to be a deed, or merely to secure you?

(Mr. Dye, on behalf of the creditors objected to, the interrogatories as immaterial, incompetent and irrelevant and leading.)

A. I understood that the farm was deeded to me for the money I had loaned him.

Mr. DYE to witness:

Q. How much money did you pay for the farm?

Judge FINCH. They didn't pay anything.

(Mr. Dye objected to Judge Finch answering the interrogatories for the witness.)

The WITNESS. What farm?

Q. The farm that your husband deeded to you.

A. We didn't pay anything for the farm.

Q. How much did you pay your husband for it?

A. I told you it was between 6,000 and 7,000 dollars.

Q. How many acres were there?

A. 162 acres.

Q. What were they worth?

A. I don't know; I am not much of a judge of land myself.
69 Q. Do you think as much as 6,000 or 7,000 dollars.

A. I expect so.

Q. Worth more than that?

A. I don't know.

Q. At the time you bought that farm——

WITNESSS (interrupting.) I didn't buy the farm——

Q. Didn't you buy a farm from your husband?

A. No, sir.

Q. He deeded one to you, didn't he?

A. I loaned him money.

Q. And he deeded you a farm to make you safe for the money you loaned him.

A. Yes, sir; I guess so.

Q. He deeded it to you for that debt, didn't he or not?

(Judge FINCH (interrupting.) She don't understand the meaning of the word.

The WITNESS to Mr. Dye. I don't know hardly how to take you.

Q. I want to know what interest you understood your husband had in that farm after the deed was made?

A. What I understood he had in it?

Q. Yes.

A. I don't hardly know—I don't hardly know how to answer you there.

Q. You never thought of that before, did you?

A. I didn't think much about it.

Q. What you thought was that he was making you safe for the money he got of your father's estate?

70 A. Partly.

Q. That the farm should be put in such shape that his creditors could not take it away without paying you for your money?

A. There was nothing said about that.

Q. That was your understanding about it, wasn't it?

A. No, sir.

Q. What was your understanding?

A. I can't hardly tell you.

Q. Did you understand that your husband would have no rights to that farm at all after that deed was made?

A. Not unless I was a mind to deed it back to him. He couldn't take it unless I was a mind to deed it back to him, could he?

Q. What do you think about it?

A. That is what I think about it.

Q. What did you think about it at that time?

A. I was not thinking very much about it.

Q. What you were thinking about was getting your money safe?

A. I didn't want to lose everything I had.

Q. You were afraid he would lose in the grocery?

A. No, sir. What would make me think he would lose it there when he thought the firm was making money?

Q. What made you think he would lose it?

71 A. I don't know; I didn't want to lose it.

Q. It was to make you safe that the farm was deeded to you?

A. To make me safe for the money that I had loaned him.

ELIZABETH W. METSKER.

(Map of farm attached and marked F.)

Exhibit F filed with master's report.

I, Rossell Burroughs, of Hamilton County, in the State of Indiana, aged 60 years and upwards, and being of sound disposing mind and memory, do make and publish this my last will and testament in manner following:

First. I direct that my funeral charges, the expenses of administering my estate, and any debts I may owe which may remain unpaid at the time of my death, be paid punctually out of my personal estate.

Second. I bequeath to my beloved wife, Keziah Burroughs, the farm on which I now reside, situate in Hamilton County, in the State of Indiana, viz, the west half of the southeast quarter of section number eleven (11), in township eighteen (18) north, of range four (4) east, containing
72 eighty (80) acres more or less, together with all the privileges and appurtenances thereunto belonging, to have and hold the same during her natural life, also the twenty-five (25) acre tract of land having *having* an orchard on it, and which is known by the name and description of the "Dawson pasture," to have and hold during the natural life of my said wife. After the death of my said wife I do hereby further direct and authorize my executors hereinafter named to sell the two tracts of land herein devised to my wife to hold during her natural life on such terms as will secure the greatest and best price, and divide the proceeds of such sale equally between my children who are living at the time of the death of my wife, and the children of such of my children as may be dead at the time of the death of my wife.

I further give and devise unto my beloved wife the following personal property, to wit:

All the household goods of every kind and description not herein otherwise of, all kitchen furniture, including all meat tubs, lard cans, and other fixtures about the smoke-house which she may need, including two sugar kettles, and one large brass kettle; one half of the corn raised during the present year on the "Myers Farm," seventy-five bushels of wheat
73 now in a box in the barn on the home farm and the box containing the same, my buggy and buggy harness and sorrel pony, seven hogs now being fatted for meat, ten sheep, a spotted sow, and eleven choice shoats, a roan cow and roan heifer, and five hundred dollars in money.

Third. I give and bequeath to my son Alfred Burroughs my half of the "Myers Farm," which he and I now own in equal parts as tenants in common, situate in Hamilton County, Indiana.

Fourth. I give and bequeath to my son James Burroughs twenty acres off the north end of the west half of th' northeast quarter of section ten (10), township eighteen (18) north, of range four (4) east.

Fifth. I give and bequeath unto my son John H. Burroughs the following described real estate situate in Hamilton County, in the State of Indiana, viz:

The east half of the northwest quarter of section ten (10), township eighteen (18), range four (4) east. Also sixty acres off the south end of the west half of the northeast quarter of section ten (10), township eighteen (18), range four (4) east, to have and hold the same to him and his heirs forever.

Provided, however, that the said John Henry Burroughs shall survive the term of his enlistment in the service of the United States; but
74 in the event that said John H. Burroughs shall not survive the term of his enlistment in the U. S. service, then and in that case I devise the above tracts of land to the lawful children of said John H. Burroughs who may survive him, and to the survivors of them, and in the event of the children of said John H. all dying without issue, then that

the land they or either of them may hold by bequest from me shall revert to my surviving children and the children of such as may be dead. I also give to my son John H. a large bay mare and the mule colt she now has, also a mule raised from a mare of said John H.; these I give in lieu of a cooking stove and fixtures I promised said John H. when he returned from the army.

Sixth. I give and bequeath to my daughter Elizabeth Burroughs, the following described real estate situate in Hamilton County, Indiana, viz: The west half of the southeast quarter of section ten (10), township eighteen (18), range four (4) east, and the south half of the southwest quarter of the southwest quarter of section ten (10), township eighteen (18), range four (4) east. I also give my said daughter my bay mare, called "Jenny," and the bridle and saddle I lately purchased for her, one cow called "Muly," and the two beds her mother designs for her.

75 Seventh. I give and bequeath to my son Perry Burroughs the following described real estate, situate in Hamilton County, Indiana, viz.: The east half of the southwest quarter of section ten (10), township eighteen (18), and range four (4) east, containing eighty acres, more or less, and one young mare, called "Paddy Colt," and saddle and bridle, which I have purchased for him. I give this property to my said son for his maintenance and support. And I do hereby appoint my son Alfred Burroughs a trustee, with full power and authority to control and manage all the real estate and property herein given to my said son Perry Burroughs, and I further direct that my son Perry shall in no wise alienate or incumber said real estate, but the same to be used and managed for his support during his natural life, and at the death of my son Perry Burroughs I order and direct that my executors herein appointed, shall sell the real estate bequeathed to my son Perry Burroughs, and divide the proceeds between my children and the children as may be dead at the time of the death of my son Perry Burroughs, share and share alike.

Eighth. I further direct that all my personal property not otherwise disposed of, which may be on hand after my death, shall be sold
76 at public sale, and the proceeds thereof used to finish paying my half of the debt for the "Myers Farm," and the 500$ cash devised to wife in this my will, and that the remainder of the proceeds of such personal property be equally divided among my children.

Ninth. I do hereby invest my executors with power and authority to sell the land herein directed to be sold at the times herein indicated, at public or private sale, and deeds to purchasers make as fully as I could myself do if living.

Tenth, and lastly. I appoint my two sons, Alfred Burroughs and James Burroughs, executors of this my last will and testament, hereby revoking all former wills by me made.

In witness whereof I have hereto subscribed my name this 18th day of October, in the year one thousand eight hundred and sixty-four, A. D. 1864.

his
ROSWELL + BURROUGHS.
mark.

Subscribed by the testator as his last will and testament in our presence,

and by us signed, and as witnesses in his presence, and at his request, and in the presence of each other on the date above written.

CHESTER D. GRANGER.
JAMES O'BRIEN.

STATE OF INDIANA,
Hamilton County, ss:

I, Jos. R. Gray, clerk of the Hamilton circuit court, in said
77 State, do hereby certify that the above and foregoing is a true copy of the last will and testament of Roswell Burroughs, deceased, as the same appears of record in my office and duly probated.

In witness whereof I have hereto set my hand and affixed the seal of said court at Noblesville, this 30th day of January, A. D. 1878.

[SEAL.] J. R. GRAY, *Clerk.*

EXHIBIT J.

$120.40. Rec'd of A. Burroughs, ex. of Roswell Burroughs, dec'd, one hundred and twenty dollars and forty cents on my distributive share of the estate of said Roswell Burroughs, December 29, 1864.

ELIZABETH W. BURROUGHS.

$204.98. Rec'd of A. Burroughs, ex. of Roswell Burroughs, the sum of two hundred and four & 90 cents, in full, of balance due me as residuary distributive in personal estate under the will of deceased, May 7, 1866.

JOHN R. METSKER,
For ELIZABETH W. METSKER.

STATE OF INDIANA,
Hamilton County, ss:

I, Joseph R. Gray, clerk of the Hamilton circuit court of the State of Indiana, do hereby certify the above and foregoing receipts to be true, full, and complete copies of the original now on file in the final report of the estate of Roswell Burroughs, dec'd, in my office.

78 Witness my name and the seal of said court at Noblesville, this the 2d day of February, 1878.

[SEAL.] JOSEPH R. GRAY, *C'lk.*

79 UNITED STATES OF AMERICA,
District of Indiana, ss:

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the above entitled cause, together with the evidence taken before the master in chancery and filed in said cause, as fully as the same appear from the records and files now in my custody.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 7th day of November, A. D. 1879.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

80 Supreme Court of the United States. Of term, .

ELIZABETH METSKER AND JOHN R. METSKER *at's*
GEORGE H. BONEBRAKE, ASSIGNEE, OF JOHN R. Metsker, a bankrupt.

Appeal of Elizabeth and John R. Metsker.

Afterwards, to wit, on the day of , in this term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said Elizabeth Metsker and John R. Metsker, by John S. Finch, their attorney, and say that on the 27 day of June, 1877, the above-named complainant filed his bill in the circuit court of the United States for the district of Indiana against the above-named defendants and appellants, stating and charging that the defendant John R. Metsker on the 2nd day of August, 1876, was the owner and in possession of the S. E. ¼ of section 35, township 19 north, range 4, worth $10,400; at that time he was a member of the firm of Poe and Metsker, who were then bankrupt, and $7,000 of their then existing liabilities have not since been paid; that on the 2nd day of August, 1876, the said defendant, John R., caused to be conveyed to the defendant and appellant Elizabeth Metsker the said tract of land, with intent to cheat and defraud his creditors, and with intent to prefer her as a creditor, contrary to the bankrupt act, of all of which she had notice, and accepted the said deed of conveyance with such notice; and that therefore said conveyance was void, and proceeds thereof ought to go to the complainants, &c., &c.

On the 4th day of August, 1877, the defendants appeared to said action, and filed a general denial to the allegations of said complaint; and on the 2nd day of September, the cause was referred to Livingston Howland, a master in chancery of that court, to report upon the facts and conclusions of law thereon.

On the 3rd day of June, 1878, said Livingston Howland, as master in chancery, reported the evidence and conclusions of law thereon, in which he found that the allegations of the bill were not sustained, and that the title of the said Elizabeth Metsker to said land was *was* valid. And on the same day the complainant filed his exceptions to said report, which exceptions on the 11th February, 1879, coming on to be heard by the court,

81 were sustained, and decree that the allegations of the bill are true, and that the deed from McCole to her for said land, as to creditors, is void, and that the said land are subject to be sold for the payment of the debts of the said John R. Metsker. The court also decree costs against the defendants. Wherefore these appellants appeal from the whole of said decree of said circuit court of the United States, and respectfully pray that the decree of the said circuit court, and the bill, answer, pleading, deposition, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of said circuit , and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or other decree, as the Supreme Court shall deem just.

JOHN A. FINCH,
Solicitor for Appellants.

U. STATES OF AMERICA,
District of Indiana:

Harrison T. Tincher, being duly sworn before me, a notary public in and for Marion County, Indiana, upon oath says that on this day he served upon John T. Dye, of counsel for the complainant, at his office in the city of Indianapolis, a true copy of this petition, &c., for appeal, as above set forth.

HARRISON T. TINCHER.

Witness my hand and notarial seal the 25th day of November, 1879.

FABIM M. FINCH,
Notary Public.

(Indorsement on cover:) No. 156. John R. Metsker & Elizabeth Metsker, appellants, v. George H. Bonebrake, assignee of John R. Metsker, a bankrupt. Indiana C. C. U. S. Filed 1st December, 1879.